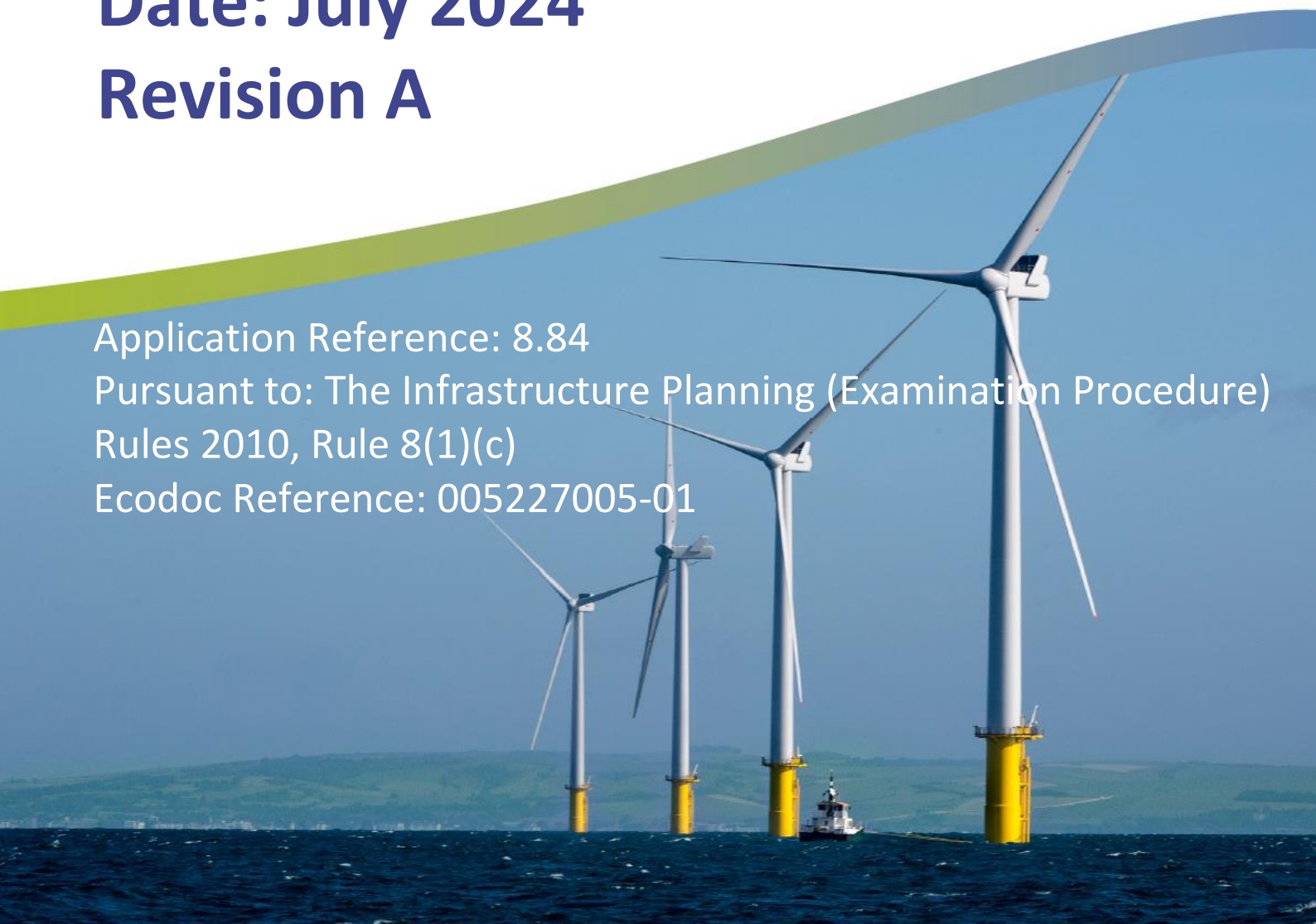


Rampion 2 Wind Farm

Applicant's Comments on Deadline 4 Submissions

Date: July 2024
Revision A

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Executive Summary

At Deadline 4 of the Examination for the Rampion 2 Offshore Wind Farm Project, Interested Parties submitted further information into the Examination.

Rampion Extension Development Limited (the 'Applicant') has taken the opportunity to review the submissions received from Interested Parties and has provided a number of comments in this document which has been submitted for Examination Deadline 5.

1. Introduction

1.1 Project overview

- 1.1.1 Rampion Extension Development Limited (hereafter referred to as 'RED') (the 'Applicant') is developing the Rampion 2 Offshore Wind Farm Project ('Rampion 2') located adjacent to the existing Rampion Offshore Wind Farm Project ('Rampion 1') in the English Channel.
- 1.1.2 Rampion 2 will be located between 13km and 26km from the Sussex Coast in the English Channel and the offshore array area will occupy an area of approximately 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

- 1.2.1 At Deadline 4 (03 June 2024), several Interested Parties provided the Examining Authority with further submissions which included:
- 4 submissions from Local Planning Authorities;
 - 4 submissions from prescribed consultees;
 - 6 submissions from parish and towns councils and Members of Parliament; and
 - 10 submissions from affected parties, and members of the public or businesses.
- 1.2.2 The Applicant has taken the opportunity to review each submission received into the Examination at Deadline 4. In this document, the Applicant has focussed on commenting on submissions made at Deadline 4 only where it will be helpful to the Examining Authority to do so. This document therefore focuses on comments that have not already been made by Interested Parties and responded to by the Applicant.

1.3 Structure of the Applicant's comments

- 1.3.1 In this document, the Applicant has focussed on commenting on Deadline 4 Submissions that were received from the Interested Parties. Each comment is identified in the relevant table:

Local Planning Authorities

- ▶ Arun District Council: **Table 2-1**;
- ▶ Horsham District Council: **Table 2-2**;
- ▶ South Downs National Park Authority: **Table 2-3**; and
- ▶ West Sussex County Council: **Table 2-4**.

Parish Councils

- ▶ Bolney Parish Council: **Table 2-5**;
- ▶ Clymping Parish Council: **Table 2-6**;
- ▶ Cowfold Parish Council: **Table 2-7**;
- ▶ Shermanbury Parish Council: **Table 2-8**;
- ▶ Twineham Parish Council: **Table 2-9**; and
- ▶ West Grinstead Parish Council: **Table 2-10**.

Prescribed Consultees

- ▶ Historic England: **Table 2-11**;
- ▶ Marine Management Organisation: **Table 2-12**;
- ▶ Southern Water: **Table 2-13**;
- ▶ Natural England:
 - Cover letter: **Table 2-14**;
 - Appendix B4 Kittiwake and guillemot: **Table 2-15**;
 - Appendix E4 Fish and shellfish: **Table 2-16**;
 - Appendix J4a Terrestrial ecology: **Table 2-17**;
 - Appendix J4b Biodiversity Net Gain: **Table 2-18**;
 - Appendix J4c Soils: **Table 2-19**; and
 - Appendix N4 Natural England's Response to The Examining Authority's request for further information from Natural England arising out of Issue Specific Hearing 2: **Table 2-20**.

Affected Parties

- ▶ Aquind: **Table 2-21**;
- ▶ Emily Ball: **Table 2-22**;
- ▶ Green Properties: **Table 2-23**;
- ▶ National Grid Energy Transmission: **Table 2-24**;
- ▶ National Highways: **Table 2-25**;
- ▶ Simon Kilham: **Table 2-26**;
- ▶ Thomas Ralph Dickson: **Table 2-27**;
- ▶ Tim Facer: **Table 2-28**;
- ▶ Winkworth Serwood LLP on behalf of Susie Fischel: **Table 2-29**;
- ▶ Wiston Estate submission #1: **Table 2-30**; and
- ▶ Wiston Estate submission #2: **Table 2-31**.

- 1.3.2 Further to this, a number of appendices have been prepared to provide more detailed information to respond to further submission where required and they are included at the end of this document. The appendices include:
- **Appendix A: Natural England Risk and Issues Log tab B: Offshore ornithology;**
 - **Appendix B: Natural England Risk and Issues Log tab C: Marine mammals;**
 - **Appendix C: Natural England Risk and Issues Log tab E: Fish and shellfish ecology;**
 - **Appendix D: Natural England Risk and Issues Log tab F: Benthic and ecology;**
 - **Appendix E: Natural England Risk and Issues Log tab J: Terrestrial ecology;**
 - **Appendix F Supplementary Technical Note;**
 - **Appendix G 171207 Cricklewood CPO1-2-DL;**
 - **Appendix H Mr Dickson Email (06.06.24);**
 - **Appendix I Mr Dickson Email: re-PDF of the proposed change plan (13.06.24);**
 - **Appendix J Mr Dickson Email (14.06.24);**
 - **Appendix K Mr Dickson Email (19.06.24);**
 - **Appendix L College Wood farm cattle info request (28.05.24);**
 - **Appendix M Mr Dickson College Wood Farm email (30.05.24);**
 - **Appendix N Mr Dickson College Wood Farm email (21.06.24);**
 - **Appendix O Mr Dickson College Wood Farm (10.06.24);**
 - **Appendix P 3278231-Vicarage Field Decision;**
 - **Appendix Q Nicholsons Shopping Centre decision;**
 - **Appendix R Wiston Estate Overlay Plan;**
- 1.3.3 Appendices A to E contain updated versions of Natural England’s risk and issues log following the request from Examining Authority in the Examining Authority’s Further Written Questions and requests for information **[PD-012]**. The tables below detail the positions of the Applicant alongside those of Natural England and whether the matter is agreed or not agreed. For further details regarding the colour coding and approach taken throughout Examination, see **Statement of Common Ground Natural England (Document Reference: 8.8)** (submitted at Deadline 5).

2. Applicant's comments to Deadline 4 submissions

2.1 Local Planning Authorities

Table 2-1 Applicant's comments to Arun District Council's Deadline 4 submissions

Ref	Deadline 4 submission	Applicant's comments
2.1.1	This letter provides Arun District Council's comments for Deadline 4 on the updated submission documents provided by the Applicant at Deadline 3.	Noted, the Applicant has no further comments at this stage.
2.1.2	<p><u>Updated Appendix 22.15 Biodiversity Net Gain Information (Rev.B)</u></p> <p>The updated BNG report from the Applicant is welcomed. The provision of the BNG metric for Arun is helpful in understanding the results within the district. This shows the habitat unit percentage loss within Arun (as follows:</p> <ul style="list-style-type: none"> Habitats units -15.16% Hedgerow units -10.82% Water units -46.40% <p>Resulting in a BNG unit deficit within Arun of:</p> <ul style="list-style-type: none"> Habitats units 42.23 Hedgerow units 1.61 Water units 1.08 <p>We welcome the Applicant's commitment to provide 10% net gain, although the above shows this falls below the 10% gain within Arun. As stated previously in our Local Impact Report, in line with policy ENV DM5 of the adopted Local Plan, BNG should be provided at the local level. It appears offsite BNG units will be required to meet the deficit and we would seek clarity on mitigation and net gain. We acknowledge that further detail will be provided at the detailed design stage in line with requirement 14 of the DCO.</p>	<p>The Applicant will be providing off-site biodiversity units in order to deliver Biodiversity Net Gain (BNG). However, it would be expected that off-site units will be able to be provided in the vicinity of the Proposed Development, and losses in Arun District will likely all be delivered within the district should they be available to purchase. It is the Applicant's understanding from discussions with local landowners that there is scope to purchase sufficient units to meet the need for BNG within Arun District.</p>
2.1.3	<p><u>Updated Outline Landscape and Ecological Management Plan (Rev.B)</u></p> <p>The updated Outline LEMP has set out the elements of the stage specific LEMP and a commitment to advance planting. However, we observe that the focus of advance planting in the Outline LEMP is outside of Arun.</p> <p>ADC would advise that if a period greater than one season passes between the stage LEMP and construction, then re-surveys for protected species would be required.</p> <p>The Applicant has committed to managing and monitoring created and reinstated habitats included in the BNG metric for 30 years with 'all other habitats' for 10 years (para 5.1.2 of the Outline LEMP). Given the deficit in BNG units in Arun, clarity would be welcomed on what created and reinstated habitat beyond that identified BNG metric (i.e. all other habitats) would be subject to managing and monitoring period of no less than ten years.</p>	<p>Noted, the Applicant acknowledges that advanced planting falls outside of Arun District Council. This is because it is focussed on the proposed onshore substation site to mitigate permanent effects.</p> <p>Habitat to be created and managed to deliver Biodiversity Net Gain (BNG) will be managed and monitored for 30 years. Habitat being reinstated to baseline condition would be managed and monitored for 10 years. This is because in most instances it will re-enter typical agricultural use and management. This is in line with how BNG is to be delivered for National Grid's recently consented Yorkshire Green project.</p>

Table 2-2 Applicant's comments to Horsham District Council's Deadline 4 submissions

Ref	Deadline 3 Applicant's information / submission	HDC Response to Deadline 3 Information/Submission	Applicant's comments
2.1.1	[REP3-013] Design and Access Statement Rev B	<p>Table 2-2 Design principles and parameters: AS5, noted that change to height of protection masts refers to 18m above FFL instead of 34.25 AOD as per Draft DCO (REV D). Please amend for consistency.</p> <p>Table 2-2 Design principles and parameters set, at AS6, that the onshore substation compound area to not exceed 6 hectares. LVIA indicates that the maximum assessment assumptions are for the Oakendene substation compound to be 2.5 ha and Oakendene West compound 5ha. It is therefore assumed this to mean that the compound area has been reduced in size and combined overall compound area (substation + west Oakendene) does not exceed 6 ha. Should this be the case, there is no concern as the LVIA does cover the worst-case scenario however if not, then clarity is required.</p>	<p>The Applicant notes that Table 2-2 within the Design and Access Statement [REP3-013] has been amended at Deadline 5 to state "...the lightning protection masts, where required at the onshore substation, will not exceed a height of 34.25m AOD".</p> <p>The Applicant notes that Design principle and parameter AS6 refers to the fenced compound area for the onshore substation during operation not the temporary construction compounds during the construction phase. Table 18-24 of Chapter 18: Landscape and visual impact assessment, Volume 2 of the Environmental Statement (ES) [APP-059] refers to five temporary construction compounds including Oakendene substation compound (2.5ha) and Oakendene West compound (5ha). Table 18-24 within Chapter 18: Landscape and visual impact assessment, Volume 2 of the ES [APP-059] refers to the onshore substation and the area for the permanent infrastructure as up to 6 hectares (ha).</p>
2.1.2	[REP3-019] ES Volume 4 Biodiversity net gain information Rev B	<p>It is positive to see that the biodiversity net gain calculations have been described at the district level (with HDC including areas of overlap with SDNPA).</p> <p>However, given the Statutory Biodiversity Metric rules, anything within the SDNPA would be classed as 'Compensation outside LPA or NCA of impact site, but in neighbouring LPA or NCA' (and subject to a spatial risk multiplier). HDC therefore request metrics be further divided by LPA, and request that any BNG to be delivered within overlapping areas of SDNPA and HDC are added to the SDNPA metric instead.</p> <p>HDC note that HDC (incl. areas of SDNPA) totals 263.67 of area/habitat biodiversity units, equalling an extent of 104.16ha, and plans are for; 0.12ha to be retained, 92.07ha to be reinstated, and 11.97ha are to be permanently lost. With regards to hedgerow, with a total of 25.70 biodiversity units (5.0131km); 3.3590km are to be retained, 1.0071km are to be reinstated, and 0.6470km are to be permanently lost. For watercourse units, with a total of 2.64 biodiversity units (0.3km), all/0.3km are to be reinstated.</p> <p>Screenshots of the metric calculations, subdivided by district, are appended in Annex A of the report (Appendix 22.15 Rev B, REP3-020). This provision is welcome, but note that as it stands, there is a negative net change of -9.17% for area/habitat units, -19.96% for hedgerow units, and -67.41% for watercourse units, leaving a deficit of 50.53 area units, 7.70 hedgerow units and 2.04 watercourse units to reach a target of 10% BNG, the highest deficit compared to other district areas (at present). It is noted that these calculations do not account for any advances or delays to habitat works due to unknown timings which are to be determined at specific stages, but the calculations do include reinstatement, replacement of trees/woodland</p>	<p>The Applicant has updated Appendix 22.15: Biodiversity Net Gain Information, Volume 4 of the Environmental Statement (ES) [REP3-019] at Deadline 5 to provide the breakdown requested by stakeholders (i.e. Arun District Council outside of the South Downs National Park Authority, South Downs National Park Authority, Horsham District outside of the South Downs National Park Authority and Mid Sussex District Council).</p> <p>The Applicant has not differentiated between biodiversity units contributing to 'no net loss' and those contributing to 'net gain' in Appendix 22.15: Biodiversity Net Gain Information, Volume 4 of the ES [REP3-019] (updated at Deadline 5). This is because at the present the analysis demonstrates that there is an overall deficit to meet both 'no net loss' and 'net gain'. Therefore, at present all habitat reinstatement and creation is counting towards compensation.</p> <p>The Applicant has discussed contributions to nature recovery strategies in a meeting with Horsham District Council on 19 June 2024. At this meeting, it was agreed that contributions to wider nature restoration projects as part of the 'Wilder Horsham' project would be beneficial but do not align with the commitment made by the Applicant with regards delivering biodiversity net gain (BNG) via the Statutory Biodiversity Metric. The Applicant is proposing to provide funds (via a Section 106 agreement) that Horsham District Council can use for supporting the Wilder Horsham project, or other measures compensating for residual effects on landscape features. However, the Applicant also remains committed to the delivery of no net loss and BNG through the mechanism developed by Natural England, and published by the Department for Environment, Food and Rural Affairs (Defra).</p>

Ref	Deadline 3 Applicant's information / submission	HDC Response to Deadline 3 Information/Submission	Applicant's comments
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to scrub, and on-site habitat creation plans at Oakendene substation. HDC also understand that there may be minor amendments to these calculations once a full survey of habitats considered to be affected is undertaken during the detailed design phase (Section 4.1.2 of REP3-020).

The amendments in Section 5.3.6 which state 'the intention being to deliver proportionally within the affected Local Planning Authority areas' (if possible) is also welcome. HDC are still of the position that separation of compensation and BNG measures would be helpful in having a full and clear understanding as to the levels of compensation that are being delivered on-site, and any remaining deficit. It will also feed into the levels of compensation and BNG that should be offset and distributed proportionally to level of impact within each LPA, where it can't otherwise be delivered on-site.

HDC have undertaken an exercise to investigate the levels of compensation still needed to achieve no net loss within the district. By copying the screenshotted metric entries from the deadline 3 material (Appendix 22.15 Rev B, REP3-020) into a Statutory Biodiversity Metric with a target of 0%, the number of units needed to achieve no net loss can be calculated. Taking the provided metric for HDC from REP3-020 (which includes some areas of SDNPA as mentioned above), the number of units still required to compensate to reach no net loss are:

- Area/Habitat: 24.17
- Hedgerow: 5.13
- Watercourse: 1.78

Until further information is forthcoming, HDC will be using these figures to inform a draft legal agreement to secure monetary contributions for Wilder Horsham District projects, to ensure proportional compensation is delivered within the district (that can't otherwise be delivered on-site). In terms of financial figures, in the absence of the totality of monetary contribution the Applicant is willing to offer, HDC have used the above number of deficit units and applied the prices of Statutory Biodiversity Credits from the national scheme by DEFRA, which would approximately equate to the following (excl. spatial risk multiplier):

- Area/Habitat: £1,744,710
- Hedgerow: £451,440
- Watercourse: £409,400

HDC understand that these are vast over-estimates and refer to these figures as the maximum cap. HDC do not plan to match these costs and would highlight that, at the time of writing, there are few habitat banks (for BNG) situated within Horsham District. As of February 2024, it is currently estimated that the national average of habitat bank unit prices is in the region of £25,000 - £35,000 per unit, however this will

Ref	Deadline 3 Applicant's information / submission	HDC Response to Deadline 3 Information/Submission	Applicant's comments
2.1.3	[REP3-023] Outline Operational Drainage Plan Rev B	<p>vary with type of habitat to be created/enhanced. HDC therefore believe that the most effective and economical way to deliver proportional compensation within the LPA is via monetary contributions to nature recovery strategies, which in turn will help with the Applicant's aim to deliver 70% of the unit deficit for no net loss, prior to commencement. HDC are willing to discuss the above with the Applicant going forward.</p> <p>The provision of figures for the proposed attenuation basins at Oakendene provided in Appendix A of REP3-050 are a welcome addition. HDC request that the figures are translated and cross referenced with regards to ecology and appended within Chapter 22 Terrestrial Ecology report (APP-063). For example, will the indicative flood levels for existing ground be of a suitable depth for proposed wet woodland planting and establishment, or whether the basins will need to be redesigned to attenuate more water. The estimated seasonality/frequency of the land being inundated will also be useful to help determine species composition of these habitats. It is also requested at the detailed design stage for the Applicant to provide indicative landscaping plans for cross sections of the basins, including shelves/benches and rockery to create varying depths, aquatic and marginal vegetation composition, and deadwood for wildlife access.</p>	<p>The Applicant notes Horsham District Council's welcoming of the provision of figures for the proposed attenuation basins at Oakendene provided in Appendix A of the Deadline 3 Submission – 8.54 Applicant's Responses to Examining Authority's First Written Questions [REP3-051].</p> <p>The Applicant does not consider it appropriate to update Chapter 22: Terrestrial ecology and nature conservation, Volume 2 of the Environmental Statement (ES) [REP4-093] with the information provided in Appendix A of Deadline 3 Submission – 8.54 Applicant's Responses to Examining Authority's First Written Questions [REP3-051]. The Applicant provided calculations and diagrams in Appendix A Deadline 3 Submission – 8.54 Applicant's Responses to Examining Authority's First Written Questions [REP3-051] to answer question FR1.2 in response the Examining Authority's first round of Written Questions [PD-009]. It was noted at the time that the additional information should not be considered in any way part of the detailed design. Instead, this additional information was provided to demonstrate that an appropriate solution to flood risk and drainage design principles set out in Appendix 26.2: Flood Risk Assessment, Volume 4 of the ES [APP-216] and the Outline Operational Drainage Plan [REP4-041] (updated at Deadline 5) could be delivered. Those indicative diagrams and calculations provided in Annex A of Appendix A within Deadline 3 Submission – 8.54 Applicant's Responses to Examining Authority's First Written Questions [REP3-051] illustrated that the attenuation basins would sufficiently be able to attenuate runoff from a flood risk perspective.</p> <p>The calculations also indicated that there would be residual water within the attenuation basins for a variety of runoff scenarios, and that during peak flood events the levels in the basins would rise and fall (drain down) as part of a cycle. The calculations indicated that there would be more than enough room to accommodate floodplain storage, whilst taking into account freeboard requirements and climate change.</p> <p>The Applicant notes that the types of woodland habitats being considered such as alder, birch or willow are suitable for a wide range of antecedent wetness conditions and is confident that they can be delivered at this location.</p> <p>The Applicant agrees that it will be useful to understand the seasonality/frequency of land inundation to help determine the species composition of the wet woodland habitats inside and outside of the proposed drainage basins. However, the Applicant considers it a matter for the detailed design at the post DCO award stage and the Applicant has added an acknowledgment of this in paragraphs 2.4.19 to 2.4.21 in an updated version of the Outline Operational Drainage Plan [REP4-041] (updated at Deadline 5). The</p>

Ref	Deadline 3 Applicant's HDC Response to Deadline 3 Information/Submission information / submission	Applicant's comments
		<p>reasoning for deferring further detail on this matter to the detailed design stage is as follows;</p> <p>A) The seasonality and frequency of land inundation will depend on numerous factors that could influence the design and performance of the basins which have not been 'fixed' as part of the DCO Application. For example, the final footprint of the onshore substation may be smaller than the maximum footprint indicated in the DCO Application, and thus the amount of land available around the substation for basins containing wet woodland is yet to be finalised. Similarly, the elevation of the onshore substation platform is not yet fixed, and thus the degree to which shelves and benches for habitat can be incorporated (including number, scale and elevation) whilst continuing to achieve the flood attenuation capacity required, is also to be determined at the detailed design stage.</p> <p>B) Alongside the physical shape/form of the basins, the hydraulic approach to the performance of the basins will affect the frequency of inundation. The indicative basins (P1- P4) in the Outline Operational Drainage Plan [REP4-041] (updated at Deadline 5) and Appendix A within Deadline 3 Submission – 8.54 Applicant's Responses to Examining Authority's First Written Questions [REP3-051] are indicated to be 'online' attenuation features, through which water would flow during even modest rainfall events. It is, however, possible that some or all of the basins could be designed to be 'offline' features, only filling with water during larger (less frequent) rainfall events (a 'long-term storage approach'). The determination of whether a long-term storage approach can be achieved, and indeed whether it would be the preferred approach for the species/habitat is also a matter to be determined at the detailed design stage, again depending on a range of factors that have not yet been 'fixed' for the application.</p> <p>C) The 'flood' capacity of the basins will need to 'drain down' over a matter of hours/days, to ensure the capacity for flood purposes is available for the next storm event. It follows that, for the most part, the decision about the hydraulic approach to attenuation (item b above) would affect the 'frequency' of the basins filling to depths, but the 'seasonality' of inundation could be designed as appropriate. For instance, the elevation of the outfall from the basins could be set at a level which encourages a 'permanent' water level in the base of the basins, and the 'drying out' would be determined by the prevalent weather.</p> <p>D) Whilst the assumption for the discharge point of the basins in the Applicant's previous response to the Examining Authority's First Written Questions [PD-009] FR1.2 a) and b) in the Appendix A within Deadline 3 Submission – 8.54 Applicant's Responses to Examining Authority's First Written Questions [REP3-051], was for pipes discharging to the watercourse, a potential consideration for the detailed design stage could be the dispersal of flow from the basins across the ground between the basins and the ordinary watercourse, where wet woodland is also proposed.</p> <p>The Applicant considers that the Outline Operational Drainage Plan [REP4-041] (updated at Deadline 5) is the best location for securing the future consideration of these matters identified by Horsham District Council, via Requirement 17 of the Draft</p>

Ref	Deadline 3 Applicant's information / submission	HDC Response to Deadline 3 Information/Submission	Applicant's comments
2.1.4	[REP3-025] Outline Code of Construction Practice Rev C	<p>2. Approach to environmental commitments</p> <p>2.8 complaints</p> <p>Complaints regarding the construction phase to managed in line with the Construction Communications Plan (CCP) Requirement 34. Further details of the complaints procedure to ensure it is responsive and effective. Are the tailored communication and Mitigation Plans the responsibility of the contractors for each phase? What level of oversight and audit of the complaints process by RED is envisaged?</p> <p>4. General principles</p> <p>4.3.5 Main compounds</p> <p>Perimeter fencing should include provision of noise barriers where they are necessary. Some activities such as loading of excavated soils will take place higher than the hoarding height of 2.4m The compounds are to include a maintenance area for plant and machinery. This is also referenced in C-8.</p> <p>What kind of maintenance activities are proposed?</p> <p>Give the open-air nature of the compounds this activity could be a significant source of disturbance.</p> <p>4.4.2 Working Hours</p> <p>The shoulder period for the Washington compound should not include deliveries or unloading due to its proximity to noise sensitive receptors. C-22 should be amended to incorporate this restriction.</p> <p>4.12 Excavated materials</p> <p>With respect to the excavated soils, it should be noted that the MMPs will require regulatory approval from Local Authority to ensure no contamination is caused at receptor sites in accordance with their statutory duty. This is usually achieved through the planning process</p>	<p>Development Consent Order [REP4-004]. This captures the key points including the separate point made by Horsham District Council and West Sussex County Council during a recent consultation meeting (on 30 April 2024) on the need for maintenance and provision of enough freeboard within the basins to address the potential risk of self-seeding vegetation resulting in a reduction in the attenuation capacity over time. The primary purpose of the sustainable drainage systems (SuDS) will be to achieve attenuation storage requirements, as set out in paragraph 2.2.4 of the Outline Operational Drainage Plan [REP4-041]. As highlighted in paragraph 2.4.13 of the Outline Operational Drainage Plan [REP4-041], once these flood risk matters are addressed, opportunities to provide benefits to biodiversity compatible with the detailed design will be delivered. The planting plan details of the landscape and ecology elements (such as including shelves/benches to create varying depths and aquatic and marginal vegetation composition) would be provided in a stage-specific landscape and ecology management plan, secured through Requirement 12 in the Draft Development Consent Order [REP4-004].</p> <p>12.8 – The Applicant notes that paragraph 6.1.3 within the Outline Noise and Vibration Management Plan [REP3-054] has been updated to state (new text in red):</p> <p>li“Where a person from a community local to the works makes a complaint with respect to construction noise and/or vibration, <i>it will be overseen by a dedicated Rampion 2 Stakeholder & Communications Manager and addressed by the Contractor(s) community relations team.</i>”</p> <p>liiThe Applicant notes that the Outline Construction Communications Plan (Document Reference: 8.86) has been submitted at Deadline 5. The Outline Construction Communications Plan (Document Reference: 8.86) sets out the overarching communications plan for construction of the Proposed Development, outlining The Applicant's commitments with regards to the communication methods and materials which will be employed to reach and inform communities local to the Rampion 2 project, who may have an interest in the construction plans. Section 7 within the Outline Construction Communications Plan (Document Reference: 8.86) outlines the complaints procedure.</p> <p>4.3.5 - Although loading of excavated soils takes place above hoarding height, the majority of noise generation will still be below 2.4m, where the excavator engine is and the hoarding will continue to provide adequate screening. Routine machinery maintenance and refuelling of machinery as referenced in commitment C-8 (Commitments Register [REP4-057]) is not considered by the Applicant to be a source of significant noise and would be subject to the management measures outlined in Section 3 within the Outline Noise and Vibration Management Plan [REP3-054] secured via Requirement 22 within the Draft Development Consent Order [REP4-004]. The Applicant notes that commitment C-33 has been updated at Deadline 5 as follows:</p> <p><i>“Stage specific CoCPs will include measures to minimise temporary disturbance to residential properties, recreational users and existing land users. It will include details of</i></p>

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		<p>and it is important that this mechanism is reflected in the requirements attached to the DCO. C-69 should recognise the role of local authorities.</p> <p>5. Management of onshore environmental issues 5.3.4 air quality mitigation measures The majority of the specific measures relating to dust and air quality management have been deleted and instead reference is made to an Outline AQMP.</p> <p>Noise and vibration 5.4.3 Commitments C-26 states that where noisy activities are planned and may cause disturbance mitigation measures may be deployed. This a poorly defined criteria for intervention leaving the judgement to the applicant's contractors. This commitment should be reworded to ensure it is precise and suitably protective.</p> <p>C-263 adopts BS-5228 as the appropriate assessment methodology for construction noise. However, the thresholds in BS5528 are considered not be sufficiently protective of noise impacts at locations where day and night background noise levels are very low. Given the DCO seeks to remove established rights under statutory nuisance a lower threshold should be adopted as set out in section E5 to BS5228-1. Any noise impact assessment must take into account the Noise Policy Statement for England.</p> <p>5.4.5 Management measures The majority of the specific measures relating to noise and vibration have been deleted and instead reference is made to an Outline Noise and Vibration Management Plan (NVMP) (Document Reference: 8.60)</p> <p>It is now stated that the NVMP will include compliance monitoring. This is welcomed but the results should be shared with the LPA and other relevant persons to provide clarity and reassurance to the impacted communities.</p>	<p><i>measures to protect these receptors including the use of screen fencing at the temporary construction compounds to contribute to minimising visual and noise impacts."</i></p> <p>4.4.2 – The Applicant restricted works in the shoulder hours (07:00 -08:00 and 18:00 – 19:00) at Deadline 1 to restrict the main noise generating activities on site during these hours to reduce impacts to noise sensitive receptors. Restricting deliveries to Washington compound to outside the shoulder hours would result in additional movements in the peak hour when roads are most congested and delay the construction schedule. Therefore, the Applicant will not be making any further amendments.</p> <p>4.12 – The Applicant notes that Requirement 22 (1) within the Draft Development Consent Order [REP4-004] stipulates that "<i>no stage of any works landward of MLWS is to commence until a detailed code of construction practice for the stage has been submitted to and approved by the <u>relevant planning authority, following consultation with the Environment Agency, the statutory nature conservation body, the highway authority and the lead local flood authority</u></i>" (underlined for emphasis).</p> <p>Requirement 22 (3) within the Draft Development Consent Order [REP4-004] also stipulates that "<i>All construction works landwards of MLWS must be undertaken in accordance with the relevant approved code of construction practice.</i>"</p> <p>Requirement 22 (4) (d) within the Draft Development Consent Order [REP4-004] also stipulates that "<i>The code of construction practice must accord with the outline code of construction practice and include, as appropriate to the relevant stage a materials management plan</i>".</p> <p>Therefore, the Applicant considers appropriate regulatory approval with respect to stage specific materials management plans is included within the Draft Development Consent Order [REP4-004].</p> <p>5.3.4 – The Applicant notes that the Examining Authority requested the Applicant to consider the provision of a standalone 'Air Quality Management Plan' in the Examining Authority's First Written Question AQ 1.1 [PD-009] which was submitted as the Outline Air Quality Management Plan [REP3-056] by the Applicant at Deadline 3. The Outline Air Quality Management Plan [REP3-056] has been prepared as an appendix to the Outline Code of Construction Practice (CoCP) [REP4-043] to provide the measures to manage the impact on air quality for the onshore elements of the Proposed Development in one document. This is part of a suite of plans supporting onshore construction works for Rampion 2.</p> <p>5.4.3 – The Applicant notes that the Outline Noise and Vibration Management Plan [REP3-054] has been updated at Deadline 5 (paragraphs 3.8.1 to 3.8.3) to include the following:</p> <p><i>"Following detailed design, all predictions of noise and where required, vibration levels, will be reviewed at all representative sensitive receptors.</i></p>

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2.1.5	[REP3-053] Outline Noise and Vibration Management Plan Rev A	<p>3.3 Working hours As noted above, the shoulder period should not apply at the Washington construction compound due to the proximity of sensitive noise receptors. C-22 should be amended.</p> <p>3.4 Construction Plant Mitigation Suitable control measures should be in place to ensure any machinery plant or equipment that is generating excessive noise because it is defective or in need of repair shall be taken out of use until it is reported.</p> <p>3.5.3 Noise barriers It is unlikely that any noise barrier will offer a reduction greater than 10dB. In areas here background noise levels are very low barriers may not be effective in mitigating adverse noise impacts at the receptors, particularly at night. As the DCO seeks to remove established rights under statutory nuisance it is important that receptors in these locations are identified and additional noise mitigation measures are employed.</p> <p>3.8 Applications for consent under Section 61 of the Control of Pollution Act 1974 The thresholds of significance adopted must be</p>	<p>vCalculations will follow the methodology in BS 5228-1:2009+A1:2014 for noise and BS 5228-2:2009+A1:2014 for vibration (British Standard Institute, 2014a; 2014b). This will consider stages and duration of works and will consider any cumulative effect with nearby works.</p> <p>vAny changes to mitigation required to minimise noise and vibration during the works will be identified and included in the stage specific NVMP. The requirement for noise and vibration monitoring during for each stage will be agreed with the relevant planning authority and provided in the stage specific NVMP including details of duration of monitoring, measurement locations relative to each work site, suitable trigger levels and actions, form and frequency of reporting.”</p> <p>The provision of stage specific Noise and Vibration Management Plans is secured through Requirement 22 of the Draft Development Consent Order [REP4-004].</p> <p>5.4.5 – The Applicant notes that the Examining Authority requested the Applicant to provide an ‘Outline Noise and Vibration Management Plan’ in the Examining Authority’s First Written Question NV 1.1 [PD-009] which was submitted as the Outline Noise and Vibration Management Plan [REP3-054] by the Applicant at Deadline 3. The Outline Noise and Vibration Management Plan [REP3-054] has been prepared as an appendix to the Outline Code of Construction Practice (CoCP) [REP4-043] to provide the measures to manage the impact on noise and vibration for the onshore elements of the Proposed Development in one document. This is part of a suite of plans supporting onshore construction works for Rampion 2.</p> <p>3.3 – Please see response reference 2.1.5 (4.4.2 ‘Working Hours’).</p> <p>3.4 – The controls mentioned are outlined in paragraph 3.2.7 (bullets 6 and 9) within the Outline Noise and Vibration Management Plan [REP3-054].</p> <p>3.5.3 – The Applicant’s text in respect of barrier performance was quoted from <i>British Standard 5228-1:2009 + A1:2014 Code of practice for noise and vibration control on construction and open sites</i> (BS 5228) (British Standards Institute (BSI), 2014). Background noise levels are not an element of the assessment methodology, and therefore reference to background levels here is incorrect. Remedial action or mitigation may be required following noise and vibration monitoring undertaken or complaints received. Should changes such as larger acoustic barriers/site hoardings be required, these will be discussed and agreed with the relevant planning authority through a stage specific NVMP update or Section 61 application (as outlined in Section 3.9 in the Outline Noise and Vibration Management Plan [REP3-054]). Other changes that can be deployed promptly, such as taking a particularly noisy item of plant out of circulation until maintenance has been carried out, will be done without prior recourse with the relevant planning authority in order to respond to monitoring outcomes or complaints received.</p>

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		<p>adequately protective of receptors in tranquil locations where day time and night time background noise levels are very low and must take into account the Noise Policy Statement for England.</p> <p>3.8.9 S61 Lead in Times S61 consents require the local authority to assess and determine the application within 28 days. This is necessarily a complex and challenging task for council officers who have other statutory functions to fulfil. The majority of the onshore shore cable routes are located within HDC. Therefore, it is important that RED provide an early indication how many S61 consents are likely to be sought. Provision of additional resource to local authorities should be secured from RED if multiple S61 applications are envisaged.</p> <p>3.9 Unscheduled overruns Overruns are acceptable only to ensure safety, engineering stability issues, or for works to mitigate environmental pollution incidents. Issues such as equipment failure or delayed delivery of materials etc are not considered sufficient justification for an overrun. Any anticipated overruns should be notified to HDC by 17:00 hours on the day the overrun is expected. Any identified receptors should also be informed.</p> <p>3.10 Commitments C-22 The shoulder period for the Washington compound should not include deliveries or unloading due to its proximity to noise sensitive receptors. C-22 should be amended to incorporate this restriction. C-263 This adopts BS-5228 as the appropriate assessment methodology for construction noise. However, the thresholds in BS5528 are considered not to be sufficiently protective of noise impacts at locations where day and night background noise levels are very low. Given the DCO seeks to remove established rights under statutory nuisance a lower threshold should be adopted as set out in section E5 to BS5228-1. Any noise impact assessment must take into account the Noise Policy Statement for England.</p> <p>5. Compliance monitoring 5.1.6 Further clarification is required regarding the selection of threshold and trigger values referred to in this section. To be effective trigger values should be set below the threshold value. Concerns remain regarding the applicability of the noise levels quoted BS5528-1 for areas when background noise levels are very low.</p> <p>5.2.1 How will the need for monitoring be identified? How will this decision be reviewed?</p>	<p>3.8 – Background levels are not relevant as the ABC method (BSI, 2014) is the appropriate assessment tool. The Noise Policy Statement for England (Department for Environment, Food and Rural Affairs (Defra), 2010) will apply in all Section 61 applications through the adoption of best practice and Best Practicable Means.</p> <p>3.8.9 – The Applicant acknowledges the required lead-in times.</p> <p>3.9 – The Applicant notes Horsham District Council's comment and refers to Section 3.10 within the Outline Noise and Vibration Management Plan [REP3-054] which states:</p> <p><i>"In the event that planned works extend beyond the working hours described in Section 3.3, or are not covered by an NVMP or prior consent (either a full Section 61 application or dispensation/variation) e.g. due to unforeseen circumstances that would affect safety or engineering practicability, the relevant local authority will be kept informed of the nature, time, location and reasons for the overrun as soon as possible, and records kept by the Contractor(s).</i></p> <p><i>The relevant local authority will be requested to provide a telephone number and nominate an office to receive such notifications. Overruns and the reasons for these will be reviewed by RED, its Contractor(s) and the relevant local authority, with the aim of reducing the potential for further unplanned overruns."</i></p> <p>3.10 – Please see response reference 2.1.5 (4.4.2 'Working Hours'). The Applicant notes that E.5. is not considered to be an appropriate assessment tool for this type of construction project. The ABC method (described within BS 5228-1 E.3. 2) is considered by the Applicant to be more appropriate and has been used on other similar sized and larger NSIPs in rural areas, including HS2, Sizewell C, Yorkshire GREEN, Luton Airport.</p> <p>5.1.6 to 5.3.4 – The Applicant notes that the Outline Noise and Vibration Management Plan [REP3-054] has been updated at Deadline 5 (paragraphs 3.8.1 to 3.8.3) to include the following:</p> <p><i>"Following detailed design, all predictions of noise and where required, vibration levels, will be reviewed at all representative sensitive receptors.</i></p> <p><i>Calculations will follow the methodology in BS 5228-1:2009+A1:2014 for noise and BS 5228-2:2009+A1:2014 for vibration (British Standard Institute, 2014a; 2014b). This will consider stages and duration of works, and will consider any cumulative effect with nearby works.</i></p> <p><i>Any changes to mitigation required to minimise noise and vibration during the works will be identified and included in the stage specific NVMP. The requirement for noise and vibration monitoring during for each stage will be agreed with the relevant planning authority and provided in the stage specific NVMP including details of duration of</i></p>

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		<p>5.2.2 What form will the alert mechanism take? Who will be responsible for reviewing and maintaining the alert system? Will this be the responsibility of RED or their site contractors?</p> <p>5.3.3 Further clarification is required regarding the selection of threshold and trigger values referred to in this section. To be effective trigger values should be set below the threshold value. Concerns remain regarding the applicability of the noise levels quoted BS5528-1 for areas when background noise levels are very low.</p> <p>5.3.4 What form will the alert mechanism take? Who will be responsible for reviewing and maintaining the alert system? Will this be the responsibility of RED or their site contractors?</p> <p>6. Communication, management and complaints</p> <p>6.2.2 How will complaints be substantiated? If the contractor is responsible for substantiating complaints, there is a clear incentive to find no issue. All complaint should be reported to the Project Team so that proper oversight of the complaints process can be maintained.</p> <p>6.2.4 Concerns have been highlighted that the thresholds of significance for noise may not be protective of receptors in areas where background noise levels are low. Where noise is exceeding thresholds by 10dB this will represent a highly intrusive level of noise. Where works exceed thresholds by 10dB activity must cease until mitigation can be incorporated, temporary respite or rehousing is provided to affected receptors.</p> <p>6.2.6 What is the escalation process referred to?</p>	<p><i>monitoring, measurement locations relative to each work site, suitable trigger levels and actions, form and frequency of reporting.</i></p> <p>The provision of stage specific Noise and Vibration Management Plans is secured through Requirement 22 of the Draft Development Consent Order [REP4-004]. There are a variety of different systems, so the exact nature of the alert is not selected. Usually this will be through SMS or email. But the Applicant recognises that the Contractor may have their own preferred method, so it is not considered suitable to be prescriptive at this time. Monitoring alerts will be responsibility of Site Contractor.</p> <p>6.2.2 to 6.2.6 – The Applicant notes that paragraph 6.1.3 within the Outline Noise and Vibration Management Plan [REP3-054] has been updated to state (new text in red):</p> <p><i>“Where a person from a community local to the works makes a complaint with respect to construction noise and/or vibration, it will be overseen by a dedicated Rampion 2 Stakeholder & Communications Manager and addressed by the Contractor(s) community relations team.”</i></p> <p>The Applicant notes that the Outline Construction Communications Plan (Document Reference: 8.86) has been submitted at Deadline 5. The Outline Construction Communications Plan (Document Reference: 8.86) sets out the overarching communications plan for construction of the Proposed Development, outlining The Applicant's commitments with regards to the communication methods and materials which will be employed to reach and inform communities local to the Rampion 2 project, who may have an interest in the construction plans. Section 7 within the Outline Construction Communications Plan (Document Reference: 8.86) outlines the complaints procedure.</p> <p>The Applicant considers that the temporal threshold for sound insulation would apply for levels 10 dB higher than the ABC method thresholds. BS 5228 states that for such levels the temporal requirement is that the levels are exceeded “...for a period of 10 or more days of working in any 15 consecutive days or for a total number of days exceeding 40 in any 6 consecutive months.”</p> <p>The management measures and mitigation that will be implemented to ensure onshore construction works are conducted in a way that removes or reduces effects to noise and vibration receptors and the relevant commitments are outlined in the Outline Code of Construction Practice [REP4-043]. As stated in the Outline Noise and Vibration Management Plan [REP3-054], stage specific NVMPs will include detail on how commitments in the Outline Noise and Vibration Management Plan [REP3-054] are to be delivered where a commitment is applicable to that stage of works. The stage specific NVMPs will be produced and agreed with the relevant planning authority for approval prior to the relevant stage of construction as part of the stage specific Code of Construction Practice. Procedures and measures stated in the Outline Code of Construction Practice [REP4-043] including the Outline Noise and Vibration Management Plan [REP3-054] such as the production of final stage specific plans are secured through Requirement 22 of the Draft Development Consent Order [REP4-004]. As the approach to noise and vibration monitoring is secured through the Draft</p>

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			Development Consent Order [REP4-004] , the Applicant does not consider changes to the Commitments Register [REP4-057] are required.
2.1.6	[REP3-037] Outline Landscape and Ecology Management Plan Rev B	It is positive to see the amendments to the Oakendene Substation Indicative Landscape Plan with reference to the infill planting at pre-commencement stage, to close gaps in existing hedgerow providing better connectivity for hazel dormouse. Supplementary planting has also been proposed within and adjacent to existing hedgerows to provide a buffer for mitigation and compensation for the EPS.	The Applicant welcomes Horsham District Council's comments on the amendments made by the Applicant to the Indicative Landscape Plans (Figures 1 and 2 of the Outline Landscape and Ecology Management Plan [REP4-047] , updated at Deadline 5).
2.1.7	[REP3-037] Outline Landscape and Ecology Management Plan Rev B	HDC welcomes the clarification at LV5 that the existing perimeter vegetation along the southern boundary will be maintained by providing a trenchless crossing and additional commitment and clarifications to advance planting.	The Applicant notes Horsham District Council's welcoming of the clarification in Landscape design principle 5 (LV5) within Table 2-1 in the Outline Landscape and Ecology Management Plan [REP4-047] that the existing perimeter vegetation along the southern boundary will be maintained by providing a trenchless crossing and additional commitment and clarifications to advance planting.
2.1.8	[REP3-037] Outline Landscape and Ecology Management Plan Rev B	HDC welcomes the amendment to the southern boundary treatment which now retains existing vegetation by providing a trenchless crossing (LV5).	The Applicant notes Horsham District Council's welcoming of the clarification in Landscape design principle 5 (LV5) within Table 2-1 in the Outline Landscape and Ecology Management Plan [REP4-047] that the existing perimeter vegetation along the southern boundary will be maintained by providing a trenchless crossing.
2.1.9	[REP3-055] Technical Note Construction Access Update Assessment Summary	HDC welcomes the findings of likely significant effects on new receptors and the applicant's commitment to review Chapter 18: Landscape and Visual Impact, at deadline 4.	The Applicant notes the comment from Horsham District Council and confirms that Chapter 18: Landscape and visual impact, Volume 2 of the Environmental Statement (ES) [APP-059] has been updated at Deadline 5 to reflect the findings reported within Deadline 3 Submission – 8.61 Technical Note Construction Access Update Assessment Summary [REP3-055] .
2.1.10	[REP3-055] Technical Note Construction Access Update Assessment Summary	<p>HDC welcome the findings of likely significant effects on new receptors and the applicant's commitment to review Chapter 18: Landscape and Visual Impact, at deadline 4.</p> <p>HDC note however that whilst suggested that REP3-024 Outline Operational Drainage Plan Rev B has been updated, HDC can still see discrepancies where, for example, the vegetation within the Kent Street/A272 junction is proposed for removal as result of the kerb widening (to facilitate construction traffic).</p> <p>HDC raises significant concern with the removal of the existing vegetation in this corner as it plays a significant role in mitigating visual effects not only at operational stage but also during construction. In addition, the widening of the bell mouth and various passing points will also have significant effects to the rural character of Kent Street and its permanent widening would not be supported.</p> <p>Please note that the vegetation loss identified within this document should also be reflected and updated within the BNG matrix and calculations.</p>	<p>The removal of vegetation on the western corner of the Kent Street/A272 junction, along with the enlarged junction / bell mouth and passing places, and subsequent reinstatement, has been illustrated in the revised photomontages in Figure 18.11a-e Viewpoint SA2: A272 of Chapter 18: Landscape and visual impact – Figures (Part 3 of 6) Revision B, Volume 3 of the ES [REP4-027].</p> <p>The Applicant confirms that the vegetation losses identified within Deadline 3 Submission – 8.61 Technical Note Construction Access Update Assessment Summary [REP3-055] have also been reflected in Appendix 22.16: Arboricultural Impact Assessment, Volume 4 of the ES [REP4-038] (updated at Deadline 5), Appendix B: Vegetation Retention and Removal Plans in the Outline Code of Construction Practice [REP4-043] (updated at Deadline 5) and Appendix 22.15: Biodiversity Net Gain Information, Volume 4 of the ES [REP3-019] (updated at Deadline 5).</p>

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2.1.11	[REP3-055] Technical Note Construction Access Update Assessment Summary	<p>The principle of Kent Street being used for construction traffic and HGV's is of significant concern for HDC given the likely impact it will have on the character and visual amenity of Kent Street. This is becoming more apparent and significant the more detailed design emerges.</p> <p>HDC would welcome its inclusion in the review of the LVIA at deadline 4 and HDC urges the applicant to further explore the use of haul roads as an alternative.</p>	<p>Construction Accesses A-26, A-28, A-61 and A-64 Traffic Management Strategies is included within Appendix D of the Outline Construction Traffic Management Plan [REP4-045]. This document provides a strategy to ensure safe access for all users of Kent Street during the construction phase of the Proposed Development. The controls set-out within this document will be included within stage specific construction traffic management plans, developed in accordance with the Outline Construction Traffic Management Plan [REP4-045] (updated at Deadline 5) secured by Requirement 24 of the Draft Development Consent Order [REP4-004].</p> <p>The effects of passing places, construction accesses and vegetation have been included in the revised Chapter 18: Landscape and visual impact, Volume 2 of the Environmental Statement [APP-059] updated at Deadline 5.</p> <p>The Applicant has previously responded to the potential approach of bridging the Cowfold Stream within Deadline 1 Submission – 8.25.3 Applicant's Post Hearing Submission – Issue Specific Hearing 1 Appendix 3 – Further information for Action Point 14 and 16 – Construction Accesses [REP1-022]. Further to this, the Applicant was requested by the Examining Authority to provide a statement comparing the potential effects of using Kent Street to access A-64 and A-61 with using haul roads (using temporary bridging where necessary) from access A-63 to access the sections of the proposed onshore cable corridor accessed from A-64 and A-61 at Issue Specific Hearing 2, the Applicant has provided to this request in Applicant's Responses to Action Points Arising from Issue Specific Hearing 2 and Compulsory Acquisition Hearing 1 [REP4-074], see PINS ref 45 in Table 2-1. It can be noted that Horsham District Council recognise (at references 2.1.7 and 2.1.8) the value of retaining the vegetation screening in this location.</p>
2.1.12	REP3-030 Outline Construction Traffic Management Plan Rev D	<p>The vegetation removal necessary to enable the delivery to the now proposed passing places within Kent Street have not been considered within the vegetation removal plans and effects on the character and visual amenity on Kent Street.</p> <p>HDC would welcome its inclusion in the review of the LVIA at deadline 4 and HDC urges the applicant to further explore the use of haul roads as an alternative.</p> <p>Furthermore, should the nature of these works become permanent, as suggested by residents, assessment of the nature of effects and mitigation measures proposed must also be provided.</p> <p>The principle of Kent Street being used for construction traffic and HGV's is of significant concern for HDC given the likely impact it will have on the character and visual amenity of Kent Street. This is becoming more apparent and significant the more the detailed design emerges. HDC urges the applicant to further explore the use of haul roads instead.</p>	<p>Please see the Applicant's responses above references 2.1.9, 2.1.10 and 2.1.11.</p>

Ref	Deadline 3 Applicant's information / submission	HDC Response to Deadline 3 Information/Submission	Applicant's comments
		<p>Please note that any vegetation loss identified within this document should also be reflected and updated within the BNG matrix and calculations.</p>	
2.1.13	<p>[REP3-056] Outline Air Quality Management Plan Rev A [REP3-053] Air Quality Mitigation Strategy Rev A</p>	<p>Gating option was evaluated by WSCC and HDC and the recommendation was that Given the compliance and enforcement issues associated with this scheme, and the likely difficulties in generating a business case, it is not recommended that this scheme is a further focus of investigation for the Steering Group. It is recommended that proposals consider the Cowfold Air Quality Management Area scheme proposals review, September 2017.</p>	<p>An updated Air Quality Mitigation Strategy [REP3-053] presenting the air quality damage costs using the revised Annual Average Traffic Data, was submitted at Deadline 5.</p> <p>As there is a general lack of availability and resources to fund Air Quality Action Plan (AQAP) measures, the damage costs to be paid by the Applicant could be used to promote the aims of Sussex Council AQAPs through the provision of funding. This Air Quality Mitigation Strategy provides a summary of potential projects which are not currently subject to Defra funding which could be selected to offset air emissions from the project in conjunction with the District and Borough councils.</p> <p>Therefore, there is scope to consider relevant measures in the Cowfold Air Quality Management Area scheme proposals review, September 2017 (Horsham District Council, 2017).</p>
2.1.14	<p>[REP3-056] Outline Air Quality Management Plan Rev A [REP3-053] Air Quality Mitigation Strategy Rev A</p>	<p>Requirement 22 of the Draft Development Consent Order does not include any specific requirement for noise, vibration, dust or air quality monitoring. A specific obligation should be inserted into the requirement worded as follows:</p> <ul style="list-style-type: none"> • A scheme of dust and noise mitigation giving full details of dust and noise monitoring mitigation measures to be deployed including identification of sensitive receptors, ongoing continuous monitoring and reporting. The scheme shall be developed by suitably qualified persons and shall include suitable targets and management actions in accordance with BS5228 Code of Practice for Noise and vibration control and the most up to date IAQM "Guidance on the assessment of dust from demolition and construction" and provision of weekly monitoring results to the Local Planning Authority until such point the Local Planning Authority agrees this is no longer necessary." <p>Monitoring compliance with requirement 22 will place significant burden on HDC and additional resource will be required to undertake this work.</p> <p>No independent monitoring of the Code of Construction Practice is required under commitment 22. The implementation and operation of the construction activities with respect noise, vibration and dust should be subject to independent audit and monitoring by a competent person. This will provide transparency and community reassurance that traffic impacts are being minimised. This audit and monitoring should be funded by the developer to reduce the burden on the LPA.</p>	<p>An updated Outline Air Quality Management Plan [REP3-056] was submitted at Deadline 5.</p> <p>The Outline Air Quality Management Plan [REP3-056] sets out the management measures and monitoring strategy related to air quality that will apply to all works carried out within the onshore part of the proposed DCO Order Limits. Stage specific Air Quality Management Plans will be produced by the appointed Contractor(s) following the grant of the Development Consent Order and prior to the relevant stage of construction. This will be produced in accordance with the Outline Air Quality Management Plan [REP3-056] for approval of the relevant planning authority as part of the stage specific Code of Construction Practice. This is secured via Requirement 22 within the Draft Development Consent Order [REP4-004].</p> <p>Commitment C-24 (updated at Deadline 5) which is included within the updated Outline Air Quality Management Plan [REP3-056] submitted as part of Deadline 5 includes the measures as detailed in the Institute of Air Quality Management (IAQM) (2024) Guidance on the Assessment of Dust from Demolition and Construction.</p> <p>The Outline Air Quality Management Plan [REP3-056] identifies areas that will be subject to air quality monitoring in Section 2.4. The scope including type, location and duration of this monitoring including any necessary baseline will be discussed and agreed with the relevant planning authority to allow adequate time to collect baseline prior to commencement of construction.</p> <p>The Applicant refers Horsham District Council to Section 9 within the Outline Construction Traffic Management Plan [REP4-045] in particular Paragraph 9.1.2 which states that "a <i>Transport Coordination Officer (TCO)</i> will be appointed by the contractors to implement the CTMP (approved by NH as the strategic highways</p>

Ref	Deadline 3 Applicant's information / submission	HDC Response to Deadline 3 Information/Submission	Applicant's comments
		<p>HDC would welcome an independent auditing of the monitoring undertaken by the Transport Coordination Officer (TCO) to ensure community confidence and to police the traffic passing through Cowfold AQMA so it does not become higher than 25% over the life of the project. Monitoring shall be included on the Construction Mitigation Plan. As monitoring is a vital part of construction, given the scale of the proposed development, the likely high number of road traffic movements generated during the construction phase a monitoring plan should be included as a measure. Major applications should consider supplementing local authority monitoring with own monitoring - which would help to increase model certainty and confidence in the results and community reassurance.</p>	<p><i>authority and WSCC as the local highway authority).</i>" Paragraph 9.1.3 within the Outline Construction Traffic Management Plan [REP4-045] outlines the responsibilities of the appointed Transport Coordination Officer (TCO) which includes:</p> <ul style="list-style-type: none"> • monitoring contractor obligations with regards the CTMP; • liaison with and reporting to the local highway authorities (WSCC) and National Highways (NH) about mitigation and remedial measures as required; • updating the CTMP as required ; and • resolving issues and problems through the liaison with relevant stakeholders. <p>The Applicant Notes that monitoring and enforcement is the responsibility of the relevant local planning authority. The Applicant has discussed the use of Planning Performance Agreements to aid local planning authorities in discharging their duties during the requirement discharge and construction period.</p>
2.1.15	<p>[REP3-056] Outline Air Quality Management Plan Rev A [REP3-053] Air Quality Mitigation Strategy Rev A</p>	<p>Monitoring shall be included on the Construction Mitigation Plan. As monitoring is a vital part of construction, given the scale of the proposed development, the likely high number of road traffic movements generated during the construction phase a monitoring plan should be included as a measure. Major applications should consider supplementing local authority monitoring with own monitoring - which would help to increase model certainty and confidence in the results and community reassurance.</p>	<p>The Outline Air Quality Management Plan [REP3-056] has been updated at Deadline 5 and identifies areas that will be subject to air quality monitoring in Section 2.4. The scope including type, location and duration of this monitoring including any necessary baseline will be discussed and agreed with the relevant planning authority to allow adequate time to collect baseline prior to commencement of construction.</p> <p>Section 2.4 in the Outline Air Quality Management Plan [REP3-056] has been updated at Deadline 5 to include the following (paragraph 2.4.4):</p> <p><i>"The nature, frequency and locations of site monitoring (for example dust deposition and dust flux) will be considered and agreed with the Local Authority through the stage specific AQMPs in areas that have been classed as Medium Risk (Table 2-2) from construction. The Medium Risk areas are the construction compounds at Washington, Climping Oakendene west and Landfall. Where possible baseline monitoring will commence at least three months before work commences on site (i.e. before any site preparation and earthworks) or, if it a large site (i.e. IAQM considers a site to be large if earthworks cover an area >10,000 m²) before work on a phase commences. Any monitoring undertaken will follow guidance provided by IAQM on monitoring during demolition, earthworks and construction and detailed in the stage specific AQMPs."</i></p> <p>Furthermore, the Applicant has introduced commitment C-303 (Commitments Register [REP4-057]) included within the Outline Air Quality Management Plan [REP3-056] and secured via Requirement 22 within the Draft Development Consent Order [REP4-004] at Deadline 5 which states:</p> <p><i>"Where medium risk construction sites have been identified in Table 2-2 of the Outline AQMP the nature, frequency and locations of site monitoring including any necessary baseline will be discussed and agreed with the relevant planning authority to allow adequate time to collect baseline prior to commencement of works at those sites."</i></p>

Ref	Deadline 3 Applicant's information / submission	HDC Response to Deadline 3 Information/Submission	Applicant's comments
			<p>An updated Air Quality Mitigation Strategy [REP3-053] presenting the air quality damage costs using the revised Annual Average Traffic Data, has been submitted at Deadline 5.</p> <p>Horsham District Council will be able to spend the funds on monitoring at their discretions.</p>
2.1.16	[REP3-056] Outline Air Quality Management Plan Rev A [REP3-053] Air Quality Mitigation Strategy Rev A	<p>Dust Management Plan (DMP) shall be included in the Construction Environmental Management Plan (CEMP).</p> <p>In creating a CEMP, it is important to evaluate the potential environmental impacts of the construction project. CEMP is required to ensure that construction activities are carried out in an environmentally responsible manner. A CEMP shall also include a plan for monitoring the environmental impact of the construction project, as well as regular reviews to update the plan as needed.</p> <p>Construction Environmental Management Plan (CEMP) can be conditioned through a planning Condition before commencement of any site preparation works.</p> <p>Requirement 22 of the Draft Development Consent Order does not include any specific requirement for Construction Environmental Management Plan.</p>	<p>An updated Outline Air Quality Management Plan [REP3-056] which covers dust controls, has been included as an Appendix to the Outline Code of Construction Practice [REP4-043] which was submitted at Deadline 5.</p> <p>The Outline Air Quality Management Plan [REP3-056] sets out the management measures and monitoring strategy related to air quality that will apply to all works carried out within the onshore part of the proposed DCO Order Limits. Stage specific Air Quality Management Plans will be produced by the appointed Contractor(s) following the grant of the Development Consent Order and prior to the relevant stage of construction. This will be produced in accordance with the Outline Air Quality Management Plan [REP3-056] for approval of the relevant planning authority as part of the stage specific Code of Construction Practice.</p> <p>This is secured via Requirement 22 within the Draft Development Consent Order [REP4-004]. The Applicant would like to clarify that the stage specific Code of Construction Practice and stage specific Air Quality Management Plans as referenced within Requirement 22 within the Draft Development Consent Order [REP4-004] serve the same function and purpose as the Construction Environmental Management Plan as referenced by Horsham District Council.</p>
2.1.17	[REP3-056] Outline Air Quality Management Plan Rev A [REP3-053] Air Quality Mitigation Strategy Rev A	The most up to date IAQM guidance shall be used on the Assessment of Dust from Demolition and Construction.	<p>The dust management measures detailed in the updated Outline Air Quality Management Plan [REP3-056] submitted as part of Deadline 5 have considered the 2024 Institute of Air Quality Management (IAQM) "Guidance on the assessment of dust from demolition and construction". The recommended dust measures in 2024 IAQM guidance are unchanged from the 2016 IAQM Guidance.</p> <p>Commitment C-24 which is included within the Outline Air Quality Management Plan [REP3-056] has been updated at Deadline 5 and states that "Best practice air quality management measures will be applied as described in Institute of Air Quality Management (IAQM) (2024) Guidance on the Assessment of Dust from Demolition and Construction 2024, version 2.2."</p>
2.1.18	[REP3-056] Outline Air Quality Management Plan Rev A [REP3-053] Air Quality Mitigation Strategy Rev A	<p>An Outline Air Quality management Plan was submitted in April 2024. The Assessment of dust from demolition and construction - 2024 V2.2 guidance was updated and revised in 2024. Applicant should refer to the latest guidance.</p> <p>Figure 7.6.6b Local Access Routes (Outline Construction Traffic Management) shows that Storrington AQMA is a potential route for LGVs. Horsham District Council rejects routing of vehicles</p>	<p>The dust management measures detailed in the updated Outline Air Quality Management Plan [REP3-056] updated at Deadline 5 have considered the 2024 Institute of Air Quality Management (IAQM) 'Guidance on the assessment of dust from demolition and construction'. The recommended dust measures in 2024 IAQM guidance are unchanged from the 2016 IAQM Guidance.</p> <p>Commitment C-24 which is included within the Outline Air Quality Management Plan [REP3-056] has been updated at Deadline 5 and states that "Best practice air quality</p>

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2.1.19	[REP3-056] Outline Air Quality Management Plan Rev A [REP3-053] Air Quality Mitigation Strategy Rev A	Requirement 24 of the Draft Development Consent Order does not include any specific requirement for road vehicle class to be Euro VI as a minimum. A specific obligation should be inserted into the requirement.	The Applicant notes that Paragraph 8.4.12 within the Outline Construction Traffic Management Plan [REP4-045] has been updated and now states "All road based vehicles used in the construction of the onshore elements of the Proposed Development will be to a EURO standard VI class or better wherever possible." The Outline Construction Traffic Management Plan [REP4-045] is secured via Requirement 24 within the Draft Development Consent Order [REP4-004] (updated at Deadline 5).

through Storrington. The Storrington AQMA is the only monitoring site in the district that is still recording concentrations within 10% of the annual mean objective. There are other viable alternative routes for LGVs to access the Washington compound and there should be no need for LGVs to go through the AQMA.

Although the HGV are not proposed to go through the AQMA, there is a proposed HGV route on the A283 that leads to Storrington. More information regarding the number of HGV on this proposed route is required and also on how HGV use will monitor and controlled by the Project Team.

Regarding the proposed monitoring strategy outlined on section 2.4, HDC would welcome additional NO2 monitoring to supplement our monitoring on construction traffic routes. This would help address concerns from residents regarding the additional construction traffic movements, and to provide community reassurance.

A Draft of the AQ mitigation strategy was submitted in April 2024.

HDC are not able to provide comments on this documents because there is a lack of detailed information to confirm the final results is correct. HDC would request that more detail about AADT is provided, including what were the values used and whether construction HGV, LGV and passenger vehicles were considered. HDC would also like to request more details on which road links were used for the damage cost calculation.

management measures will be applied as described in Institute of Air Quality Management (IAQM) (2024) Guidance on the Assessment of Dust from Demolition and Construction 2024, version 2.2."

Figure 7.6.6b of the **Outline Construction Traffic Management Plan [REP4-045]** shows potential LGV routes to site based upon journey to work information derived upon Census 2011 data. Given that the route through Storrington uses the A283 this is considered the most appropriate route for construction workers traveling to site from areas to the west. Further to this, Table 2-15 of **Chapter 32: ES Addendum, Volume 2** of the Environmental Statement (ES) **[REP1-006]** updated at Deadline 5 shows an estimated peak week construction traffic flow of approximately 150 vehicles day at Receptor O (A283 Storrington Road, Northeast of Sullington Lane), equivalent to less than a 1.0% increase in baseline traffic flows. Noting this estimate includes LGVs associated with access A-33, the number of construction traffic vehicles passing through Storrington will not be significant.

In relation to HGVs, the A283 west of access A-33 is not a permitted HGV route. This is shown on Figure 7.6.6b of the **Outline Construction Traffic Management Plan [REP4-045]**. Further to this, Appendix A of the **Outline Construction Traffic Management Plan [REP4-045]** defines that construction access A-33 will need to be designed to cater for HGVs movements to / from the east only.

Monitoring and enforcement of HGV movements is detailed within the Section 9 and 10 of the **Outline Construction Traffic Management Plan [REP4-045]**.

The **Outline Air Quality Management Plan [REP3-056]** sets out the management measures and monitoring strategy related to air quality that will apply to all works carried out within the onshore part of the proposed DCO Order Limits. Stage specific Air Quality Management Plans will be produced by the appointed Contractor(s) following the grant of the Development Consent Order and prior to the relevant stage of construction. Monitoring of NO₂ can be considered at that stage, where relevant.

An updated **Air Quality Mitigation Strategy [REP3-053]** presenting the air quality damage costs using the revised Annual Average Daily Traffic (AADT) data, including Heavy Duty Vehicles (HDVs) and Light Duty Vehicles (LDVs), was submitted at Deadline 5.

The **Air Quality Mitigation Strategy [REP3-053]** was updated to include a separate table detailing the AADT traffic data and reference to the traffic highway links used in the damage cost calculations for each construction year.

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2.1.20	[REP3-056] Outline Air Quality Management Plan Rev A [REP3-053] Air Quality Mitigation Strategy Rev A	<p>Requirement 22 of the Draft Development Consent Order does not include any specific requirement for noise, vibration, dust or air quality monitoring. A specific obligation should be inserted into the requirement worded as follows:</p> <ul style="list-style-type: none"> • A scheme of dust and noise mitigation giving full details of dust and noise monitoring mitigation measures to be deployed including identification of sensitive receptors, ongoing continuous monitoring and reporting. The scheme shall be developed by suitably qualified persons and shall include suitable targets and management actions in accordance with BS5228 Code of Practice for Noise and Vibration control and the most up to date IAQM "Guidance on the assessment of dust from demolition and construction" and provision of weekly monitoring results to the Local Planning Authority until such point the Local Planning Authority agrees this is no longer necessary." <p>Monitoring compliance with requirement 22 will place significant burden on HDC and additional resource will be required to undertake this work. No independent monitoring of the Code of Construction Practice is required under commitment 22. The implementation and operation of the construction activities with respect noise, vibration and dust should be subject to independent audit and monitoring by a competent person. This will provide transparency and community reassurance that traffic impacts are being minimised. This audit and monitoring should be funded by the developer to reduce the burden on the LPA.</p> <p>HDC would welcome an independent auditing of the monitoring undertaken by the Transport Coordination Officer (TCO) to ensure community confidence and to police the traffic passing through Cowfold AQMA so it does not become higher than 25% over the life of the project. Monitoring shall be included on the Construction Mitigation Plan. As monitoring is a vital part of construction, given the scale of the proposed development, the likely high number of road traffic movements generated during the construction phase a monitoring plan should be included as a measure. Major applications should consider supplementing local authority monitoring with own monitoring - which would help to increase model certainty and confidence in the results and community reassurance.</p>	Please see response reference 2.1.14.
2.1.21	[REP3-056] Outline Air Quality Management Plan Rev A [REP3-053] Air Quality Mitigation Strategy Rev A	<p>HDC have concerns regarding modelling results, as Cowfold worst-location (DT37) is still underpredicting by 24.5% even after modelling results were adjusted. There was not any breach of annual mean NO₂ objective at HDC monitoring location in the past four years (2019-2022), but site DT37 (Cowfold 7n) reached a concentration of 36.1µg/m³ in 2019, which is within 10% of the annual mean objective. As stated on TG22: The fractional bias of the model may be used in order to identify if the model shows a systematic tendency to over or</p>	<p>Chapter 32: ES Addendum, Volume 2 of the Environmental Statement (ES) [REP1-006] presents all the statistical parameters for model performance, calculated based on all the diffusion tubes considered in the assessment.</p> <p>The Applicant notes that according to the latest Horsham District Council Air Quality Annual Status Report, published in August 2023, annual mean nitrogen dioxide (NO₂) concentrations in 2022 at Cowfold 37 diffusion tube (DT37) were 31.7 µg/m³ and 31.2 µg/m³ in 2021.</p>

Ref	Deadline 3 Applicant's information / submission	HDC Response to Deadline 3 Information/Submission	Applicant's comments
		<p>under predict. However, care should be taken when using this statistic particularly where local authorities are concerned about the performance of the model at concentrations close to the air quality objective being assessed. The fractional bias provides the tendency of the whole model to under or over predict, and local authorities should consider the performance at each site. The correlation coefficient is used to measure the linear relationship between predicted and observed data. A value of zero means no relationship and a value of 1 means absolute relationship. The correlation coefficient for the model after adjustment is 0.595, which is distant to the ideal value of 1.0. HDC concern is that with this monitoring location being severely underpredicting, the conclusion of AQ impacts at the worst-location will not be valid.</p>	<p>The Applicant notes that the fractional bias for DT37 alone is not within the Defra guidance TG(22) range, indicating the model is slightly underperforming at that location; however, considering all diffusion tubes it is within an acceptable range. A separate verification factor based solely on DT37 for receptor points CW39 and CW40, in proximity to DT37 but at locations of relevant exposure, will not result in significant impacts due to the incremental increase in concentrations (<0.5mg/m³, equivalent to 1% of the objective), reported in Table B 6 Modelled annual mean NO₂ impacts due to construction traffic, Chapter 32: ES Addendum, Volume 2 of the ES [REP1-006], for CW39 and CW40.</p> <p>Any updates to the verification factor, that is applied to both with and without development scenarios, will result in the same incremental change in concentrations as reported in Chapter 32: ES Addendum, Volume 2 of the ES [REP1-006]. An incremental change of 1% at locations where the annual mean NO₂ concentration is between 76-94% of the annual mean objective of 40 mg/m³ (Table 6.3: Impact descriptors for individual receptors, EPUK & IAQM Guidance 'Land-Use Planning & Development Control: Planning For Air Quality', 2017) is classed as negligible. A verification factor using just DT37 will only result in an increase in the Predicted Environmental Concentrations (PEC) at CW39 and CW40, with the PEC remaining within the 76-94% of the objective.</p> <p>Therefore, the outcome of the air quality assessment as presented in Chapter 32: ES Addendum, Volume 2 of the ES [REP1-006] is valid. It should also be noted that Annual Average Daily Traffic (AADTs) flows through Cowfold Air Quality Management Area (AQMA) screen out from requiring a detailed modelling assessment according to the screening criteria of EPUK and IAQM guidance (2017).</p> <p>It should also be noted that Annual Average Daily Traffic (AADTs) flows through Cowfold Air Quality Management Area (AQMA) screen out from requiring a detailed modelling assessment according to the screening criteria of EPUK and IAQM guidance (2017). In addition, an Air Quality Mitigation Strategy [REP3-053] (updated at Deadline 5) presenting the air quality damage costs, was submitted at Deadline 3 with a view of funding a number of projects within the relevant planning authority to mitigate the temporary increases in emissions to air.</p>
2.1.22	[REP3-056] Outline Air Quality Management Plan Rev A [REP3-053] Air Quality Mitigation Strategy Rev A	Although the receptors are plotted on the map (Figure 19.2, Chapter 19: Air quality – Figures, Volume 3, of the ES [APP-104]), they are not labelled, which makes reviewing the model assumptions and results a laborious process.	The Applicant has no further comments on this matter at this time.
2.1.23	[REP3-056] Outline Air Quality Management Plan Rev A [REP3-053] Air Quality Mitigation Strategy Rev A	HDC have concerns regarding modelling results, as Cowfold worst-location (DT37) is still underpredicting by 24.5% even after modelling results were adjusted. There was not any breach of annual mean NO ₂ objective at HDC monitoring location in the past four years (2019-2022), but site DT37 (Cowfold 7n) reached a concentration of	Please see response reference 2.1.21 .

Ref	Deadline 3 Applicant's information / submission	HDC Response to Deadline 3 Information/Submission	Applicant's comments
		<p>36.1µg/m³ in 2019, which is within 10% of the annual mean objective. As stated on TG22: The fractional bias of the model may be used in order to identify if the model shows a systematic tendency to over or under predict. However, care should be taken when using this statistic particularly where local authorities are concerned about the performance of the model at concentrations close to the air quality objective being assessed. The fractional bias provides the tendency of the whole model to under or over predict, and local authorities should consider the performance at each site. The correlation coefficient is used to measure the linear relationship between predicted and observed data. A value of zero means no relationship and a value of 1 means absolute relationship. The correlation coefficient for the model after adjustment is 0.595, which is distant to the ideal value of 1.0. HDC concern is that with this monitoring location being severely underpredicting, the conclusion of AQ impacts at the worst-location will not be valid.</p>	
2.1.24	[REP3-50] Commitments Register Rev C	<p>Please note: HDC commentary on specific commitments has been provided within the Council's response on individual control document submissions at deadline 3.</p> <p>HDC welcomes the amendments made.</p>	The Applicant notes Horsham District Council's welcoming of the amendments made to the Commitments Register [REP4-057] updated at Deadline 5.
2.1.25	[REP3-50] Commitments Register Rev C	HDC is of the view that the noise impacts from the substation, once operational, have not been fully assessed and that noise levels below the daytime and night-time noise limits as detailed in Commitment C-231 could still result in significant noise impact to residential amenity	The Applicant considers that the design minimises noise to as low as is practicable, that is, the predicted operational noise levels are below the Lowest Observed Adverse Effect Level (LOAEL). As the Applicant demonstrated in the Deadline 4 Submission – 8.77 Applicant's Response to Stakeholder's Replies to Examining Authority Written Questions Revision A [REP4-079] "There is no published evidence to support specifying a rating level below 35dB outside at night. A rating level of 35dB outside and below are equivalent in terms of protecting the amenity of occupier. Specification of a rating level below 35dB outside at night does not provide additional benefit to the occupier." This remains the Applicant's position.
2.1.26	[REP3-051] Applicant's Response to Examining Authority's First Written Questions (ExQ1)	<p>HDC welcomes the submission of cross sections indicating depths and design of the proposed basins submitted in response to EXA questions FR1.2 Drainage Proposals for the Proposed Substation Site at Oakdene.</p> <p>HDC requests that these are embedded within the DAS as benchmark for future detailed applications. Furthermore, HDC have been advised by the applicant that the current attenuation basin scheme is over engineered and that there is opportunity to reduce the basins slopes and depths, as well as shallow the bund slope. HDC would also request the inclusion of wording to that effect within the DAS.</p>	The Applicant provided calculations and diagrams (including the cross sections referred to by Horsham District Council) in Appendix A of the Deadline 3 Submission – 8.54 Applicant's Responses to Examining Authority's First Written Questions [REP3-051] to answer question FR1.2 in response the Examining Authority's first round of Written Questions. The response provided was in relation to how the proposed drainage from the site would operate at times when the ordinary watercourse to the south of the site is in flood. It was noted at the time that the additional information (including the indicative cross sections) should not be considered in any way part of the detailed design. Instead, this additional information was provided to demonstrate that an appropriate solution to flood risk and drainage design principles set out in Appendix 26.2: Flood Risk Assessment, Volume 4 of the Environmental Statement [APP-216] and Outline Operational Drainage Plan [REP4-041] (updated at Deadline 5) could be delivered, without committing the application to the indicative information provided.

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2.1.27	[REP3-051] Applicant's Response to Examining Authority's First Written Questions (ExQ1)	<p>HDC's position on Water Neutrality is set out in its response to First Written Questions [REP3-069] and is unchanged. HDC welcomes the applicant's submitted calculations of types of indicative volume of water usage (construction and operational) at deadline 3.</p> <p>Construction Water Usage Given the significant fall in construction of new housing in Horsham District since the Natural England Position Statement (from circa 1,000dpa to circa 400dpa), there is substantial headroom capacity to accommodate construction water usage of Rampion. This is evidenced in HDC Authority Monitoring Report 2022/2023.1 Additionally, future planned housing has been suppressed by Water Neutrality in the HDC emerging local plan. This is evidenced in the Council's Regulation 19 Local Plan Consultation which plans for circa 480 dpa until 2028.</p> <p>This position would remove the need for tankering all construction water in for Rampion 2 within the Sussex North supply zone, which</p>	<p>As explained in the meeting minutes of the 30 April 2024 meeting with West Sussex County Council and Horsham District Council, the Applicant consider that it is not appropriate to include the information provided in response to FR1.2 in any updated application documents. The Applicant's position is that the information provided related to detailed consideration of a potential option, thus going beyond the outline consent sought by the DCO.</p> <p>As a result, the Applicant disagrees that indicative cross sections should be included in the Design and Access Statement [REP3-013] (updated at Deadline 5) to provide a 'benchmark for future applications'. The Applicant reiterates that such detail will be provided at the detailed design stage as part of the Operational Drainage Planas secured by Requirement 17 of the Draft Development Consent Order [REP4-004].</p> <p>In response to Horsham District Council's second request, that the wording of the Design and Access Statement [REP3-013] (updated at Deadline 5) be updated to highlight the potential opportunity to reduce the basins slopes and depths, the Applicant does not consider this to be necessary as the point is covered by existing documentation. It is already acknowledged in the Outline Operational Drainage Plan [REP4-041] (paragraph 2.4.13), that once the flood risk requirements of the SuDS strategy are addressed, there may be opportunities for <i>"reduction in the basin footprints and/or side slopes to improve the functioning of the SuDS system, and/or for the benefit of other environmental disciplines (shallower side slopes may achieve increased biodiversity benefits for example)... will be considered further when preparing the ODP."</i></p> <p>For clarity as to the reason why such opportunities could exist, the Applicant advised at Issue Specific Hearing 1 that, in summary, the indicative SuDS proposals, more than account for the attenuation requirements of the Site (Deadline 1 Submission – 8.31 Applicant's Post Hearing Submission – Issue Specific Hearing 1 [REP1-033]).</p> <p>The Applicant notes and welcomes these comments which are consistent with responses provided to comments on WE 1.1 within Deadline 4 Submission – 8.66 Applicant's Comments on Deadline 3 Submissions Revision A [REP4-070]. The Applicant has also amended the Requirement 8 (3) in accordance with Horsham District Council's latest comments as part of the updated Draft Development Consent Order [REP4-004] (updated at Deadline 5). For completeness the definition of water neutrality will be added to the wording of the Requirement as part of the Deadline 5 version.</p> <p>The Applicant notes that Natural England have recently confirmed that they too share the consensus with Horsham District Council and the Applicant in relation to water neutrality. The Applicant had a meeting on 28 June 2024 with Natural England who confirmed their overall agreement on water neutrality and that they have no outstanding concerns.</p>

Ref	Deadline 3 Applicant's information / submission	HDC Response to Deadline 3 Information/Submission	Applicant's comments
		<p>HDC considers to be unenforceable. It would enable construction water usage to be screened out for HRA AA purposes.</p> <p>It should be noted that Natural England have previously accepted this evidence as justification to screen out construction water use for all other development in the water supply zone.</p> <p>Operational and maintenance Water Usage The indicative volumes provided by the applicant at deadline 3 demonstrate the indicative volumes represent very low usage in the context of other development and could likely be accommodated by an offsetting scheme (named SNOWS – the Local Planning Authority offsetting scheme currently in production for the Sussex North Water Resource Zone), if access to such a future scheme were available. The Applicant also notes that other options are available should a strategic offsetting scheme not be available. These are documented in Chapter 26 {APP-067}, Design and Access Statement [REP3-013] but an amended wording to Requirement 8 [3] in the Draft DCO [REP3-003] is requested to confidently secure this. As such the Applicant will use the SNOWS scheme if available, but if not, they are not overly reliant on it being in place.</p>	
2.1.28	[REP3-051] Applicant's Response to Examining Authority's First Written Questions (ExQ1)	<p>Table 2.13 Noise and Vibration</p> <p>NV1.1 The Outline Noise and Vibration Management Plan only sets broad principles. and defers to the site-specific noise and vibration management plans to be drawn up by the contractors. These have yet to be provided so it is not possible to consider the adequacy of these plans.</p> <p>NV1.3 (b) The maximum source noise modelled for the temporary construction compounds and was considered worst case and atypical of actual noise levels. This It should be made clear that these high values are not used to set the threshold of significance for calculating noise impacts or for determining mitigation. For sites with longer durations such as the construction compounds reduced thresholds should be considered as set out in E5 of BS5228:2009-1</p> <p>The shoulder period for the Washington compound should not include deliveries or unloading due to its proximity to noise sensitive receptors. C-22 should be amended to incorporate this restriction.</p>	<p>NV.1.1 – The Applicant notes that Stage specific Noise and Vibration Management Plans (NVMPs) will be produced in accordance with the Outline Noise and Vibration Management Plan [REP3-054] secured via Requirement 22 within the Draft Development Consent Order [REP4-004] and will be provided to the relevant planning authority for approval prior to the relevant stage of construction. The works shall be undertaken in accordance with stage-specific NVMPs to manage the effects of construction noise and vibration.</p> <p>NV1.3b – Horsham District Council refer to paragraph E.5 in Annex E of British Standard 5228 (British Standards Institute (BSI), 2014). However, the criteria within paragraph E.5 in Annex E of British Standard 5228 (BSI, 2014) are specifically related to long term earth moving in a single area, akin to surface extraction works, which does not represent the construction activity within Temporary Construction Compounds. The Applicant considers that the advice within Annex E paragraph E.2 (BSI, 2014) is appropriate.</p> <p>Paragraph E.2 states <i>“For projects of significant size such as the construction of a new railway or trunk road, historically, there have been two approaches to determining whether construction noise levels could be significant. The older and more simplistic is based upon exceedance of fixed noise limits...”</i></p> <p>Paragraph E.2 provides an example of the fixed limits approach <i>“Noise from construction and demolition sites should not exceed the level at which conversation in the nearest building would be difficult with the windows shut. The noise can be measured with a simple sound level meter, as we hear it, in A-weighted decibels (dB(A))– see note below.</i></p>

Ref	Deadline 3 Applicant's information / submission	HDC Response to Deadline 3 Information/Submission	Applicant's comments
2.1.29	[REP3-051] Applicant's Response to Examining Authority's First Written Questions (ExQ1)	NV 1.7 Draft requirement 10 only requires that a written programme identifying the stages of those works to be submitted to and approved by the relevant planning authorities. It gives no guide as to the level details to be submitted.	<p>Noise levels, between say 07.00 and 19.00 hours, outside the nearest window of the occupied room closest to the site boundary should not exceed:</p> <ul style="list-style-type: none"> i 70 decibels (dBA) in rural, suburban and urban areas away from main road traffic and industrial noise; ii 75 decibels (dBA) in urban areas near main roads in heavy industrial areas. <p>These limits are for daytime working outside living rooms and offices. In noise-sensitive situations, for example, near hospitals and educational establishments – and when working outside the normal hours say between 19.00 and 22.00 hours – the allowable noise levels from building sites will be less: such as the reduced values given in the contract specification or as advised by the Environmental Health Officer (a reduction of 10 dB(A) may often be appropriate).</p> <p>E.2 goes on to state that “The above principle has been expanded over time to include a suite of noise levels covering the whole day/week period taking into account the varying sensitivities through these periods. Examples are provided in E.3.2 (see Table E.1) and in E.4 (see Table E.2), and the levels shown in Table E.2 are often used as limits above which noise insulation would be provided if the temporal criteria are also exceeded.”</p> <p>As such the approach to construction noise assessment in Chapter 21: Noise and vibration, Volume 2 of the Environmental Statement [PEPD-018] has applied the ABC method (as specified within E.3.2) and is consistent with the method as set out by BS5228 (BSI, 2014) as being appropriate for the assessment of construction noise related to construction projects of significant size. The Applicant considers that the noise assessment uses the correct methodology.</p> <p>The need for deliveries during shoulder hours and potential restrictions to avoid sensitive receptors (where specifically justified or required) will be determined during detailed design once the construction programme has been developed further. Such restrictions can be included within detailed construction traffic management strategies, which would need to be approved West Sussex County Council and Local Planning Authority in accordance with Requirement 24 of the Draft Development Consent Order [REP4-004].</p> <p>It should be recognised, however, that the Applicant considers that the Shoulder hours (07:00 – 08:00, 18:00 – 19:00) secured through the Outline Code of Construction Practice [REP4-043] (paragraph 4.4.2) are within periods that are considered daytime (07:00-19:00) by BS 5228 part 1, the code of practice for construction noise and therefore such noises are not inconsistent with activities that would usually be considered acceptable within these hours on other construction sites.</p> <p>The Applicant does not consider that it is appropriate that the programme of stages to be submitted pursuant to Requirement 10 to include detail for the scope of works proposed to be undertaken in relation to each identified stage. The purpose of the programme of stages secured by requirement 10 is to identify stages in respect of which control documents must be submitted and approved in accordance with other requirements of the Draft Development Consent Order [REP4-004] (updated at Deadline 5).</p>

Ref	Deadline 3 Applicant's information / submission	HDC Response to Deadline 3 Information/Submission	Applicant's comments
			<p>The submission and approval of those control documents given by the appropriate discharging authority will confirm the works which are then authorised to be undertaken, and the respective requirements each ensure that the approved document must be implemented as approved. The level of detail to be submitted is guided by the outline documents provided to the examination.</p>
2.1.30	[REP3-051] Applicant's Response to Examining Authority's First Written Questions (ExQ1)	<p>It is still unclear that the impacts on the neighbouring camping and caravanning sites were taken into account in selecting the Washington TCC. The compound will contain significant features such as storage of materials and equipment (up to 7m high) and a concrete batching plant up to 20m high.</p>	<p>The Applicant confirms that neighbouring camping and caravanning sites were considered as part of the design evolution process. Chapter 21: Noise and vibration, Volume 2 of the Environmental Statement [PEPD-018] includes this receptor named as "Compound 2 – N (Caravan Park)".</p>
2.1.31	[REP3-051] Applicant's Response to Examining Authority's First Written Questions (ExQ1)	<p>Requirement 22 of the Draft Development Consent Order does not require the activities or layout of the TCC be subject approval by the relevant authorities.</p>	<p>The Applicant recognises that Requirement 22 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5) does not require approval in respect of the layout or activities in the temporary construction compounds from the relevant authorities, however where mitigation is required to prevent significant noise or vibration effects, the local authority will be advised of this within the stage specific Noise and Vibration Management Plan (NVMP), and any consultation response from the relevant authorities on the ways of working identified within the stage specific NVMP will be considered.</p> <p>The Applicant considers that the details sought for the compounds comprising Work No.10 will be secured through the stage specific Construction Method Statement (secured through Requirement 23 of the Draft Development Consent Order [REP4-004] updated at deadline 5) and stage specific code of construction practice (secured through Requirement 22): see section 2.5 of the Outline Construction Method Statement [APP-255] (updated at Deadline 5), and paragraph 4.3.5 of the Outline Code of Construction Practice [REP4-043] (updated at Deadline 5).</p>
2.1.32	[REP3-051] Applicant's Response to Examining Authority's First Written Questions (ExQ1)	<p>Requirement 22 of the Draft Development Consent Order does not include any specific requirement for noise, vibration, dust or air quality monitoring. A specific obligation should be inserted into the requirement worded as follows:</p> <ul style="list-style-type: none"> • A scheme of dust and noise mitigation giving full details of dust and noise monitoring mitigation measures to be deployed including identification of sensitive receptors, ongoing continuous monitoring and reporting. The scheme shall be developed by suitably qualified persons and shall include suitable targets and management actions in accordance with BS5228 Code of Practice for Noise and Vibration control and the IAQM "Guidance on the assessment of dust from demolition and construction" January 2024 (Version 2.2 and provision of weekly monitoring results to the Local Planning Authority until such point the Local Planning Authority agrees this is no longer necessary." 	<p>Please see the Applicant's response above in reference 2.1.14.</p>

Ref	Deadline 3 Applicant's information / submission	HDC Response to Deadline 3 Information/Submission	Applicant's comments
2.1.33	[REP3-051] Applicant's Response to Examining Authority's First Written Questions (ExQ1)	<p>Monitoring compliance with requirement 22 will place significant burden on HDC and additional resource will be required to undertake this work.</p> <p>No independent monitoring of the Code of Construction Practice is required under commitment 22. The implementation and operation of the construction activities with respect noise, vibration and dust should be subject to independent audit and monitoring by a competent person. This will provide transparency and community reassurance that traffic impacts are being minimised. This audit and monitoring should be funded by the developer to reduce the burden on the LPA.</p> <p>This is of critical importance given that section 8 to Part 2 of the DCO "Defence to proceedings in respect of statutory nuisance" removes the power for local authority to take action for nuisance and also under the provisions of the for controlling construction noise set out in the Control, of Pollution Act. Effective ongoing monitoring is therefore a key requirement for the enforcement of the provisions Code of construction practice.</p> <p>The status of the Outline Construction Traffic Management Plan is unclear Commitment 24 includes the outline plan is required but this is not explicit in the commitment wording:</p> <p>"24.—(1) No stage of the authorised project within the onshore Order limits is to commence until written details of (a) a construction traffic management plan (which accords with the outline construction traffic management plan); and (b) a construction workforce travel plan (which accords with the outline construction workforce travel plan)),</p> <p>for the stage have each been submitted to and approved by the highway authority following consultation with the relevant planning authority.</p> <p>(2) The construction traffic management plan must include, as a minimum—</p> <p>(a) a routeing plan to secure that heavy goods vehicles (HGVs) used during the construction period are to avoid settlements, the Air Quality Management Area in Cowfold and the A24 through Findon wherever possible;</p> <p>The settlements should be to be avoided should be identified as set out in C-158 as Storrington, Cowfold, Steyning, Wineham, Henfield, Woodmancote."</p> <p>As with the Code of Construction Practice, no independent monitoring of the Construction Traffic Management Plan is required under</p>	<p>The monitoring requirements for stage specific construction traffic management plans is detailed in Section 9 and 10 of the Outline Construction Traffic Management Plan [REP4-045].</p> <p>A Transport Coordination Officer(s) (TCO) will be employed by the contractor and be responsible for implementing the Construction Traffic Management Plan (CTMP). The TCO will have the following transport related responsibilities:</p> <ul style="list-style-type: none"> • monitoring contractor obligations with regards the CTMP; • liaison with and reporting to the local highway authorities (West Sussex County Council) and National Highways (NH) about mitigation and remedial measures as required; • updating the CTMP as required; and • resolving issues and problems through the liaison with relevant stakeholders.

Ref	Deadline 3 Applicant's information / submission	HDC Response to Deadline 3 Information/Submission	Applicant's comments
2.1.34	[REP3-051] Applicant's Response to Examining Authority's First Written Questions (ExQ1)	<p>commitment 24. The implementation and operation of the traffic management route should be subject to independent audit and monitoring by a competent person. This will provide transparency and community reassurance that traffic impacts are being minimised. This audit and monitoring should be funded by the developer to reduce the burden on the LPA.</p> <p>Measures to control releases of fugitive dusts from soil stripping, stockpiling, and removal from storage should be included in the Soils Management Plan.</p> <p>The recommendations given in the Institute of Air Quality Management document "Guidance on the assessment of dust from demolition and construction" January 2024 (Version 2.2) should be incorporated into the Soils Management Plan.</p>	<p>The Outline Soils Management Plan [REP3-027] (updated at Deadline 5) has been prepared as an Appendix to the Outline Code of Construction Practice [REP4-043], to provide the measures to manage the impact on soil resources for the onshore element of the Proposed Development. This is part of a suite of plans supporting onshore construction works for Rampion 2. The Applicant notes that an Outline Air Quality Management Plan [REP3-056] which covers dust controls, has also been included as an Appendix to the Outline Code of Construction Practice [REP4-043] updated at Deadline 5.</p> <p>The Outline Air Quality Management Plan [REP3-056] sets out the management measures related to Air Quality that will apply to all works (including soil stripping) carried out within the onshore part of the proposed DCO Order Limits. Stage specific Air Quality Management Plans will be produced by the appointed Contractor(s) following the grant of the Development Consent Order and prior to the relevant stage of construction. This will be produced in accordance with the Outline Air Quality Management Plan [REP3-056] for approval of the relevant planning authority as part of the stage specific Code of Construction Practice. This is secured via Requirement 22 within the Draft Development Consent Order [REP4-004].</p> <p>Commitment C-24 which is included within the Outline Air Quality Management Plan [REP3-056] has been updated at Deadline 5 and states that "<i>Best practice air quality management measures will be applied as described in Institute of Air Quality Management (IAQM) (2024) Guidance on the Assessment of Dust from Demolition and Construction 2024, version 2.2.</i>"</p> <p>Table 2-3 within the Outline Air Quality Management Plan [REP3-056] sets out the mitigation measures for construction dust management and includes measures specific to earthworks (including soil stripping).</p>
2.1.35	[REP3-051] Applicant's Response to Examining Authority's First Written Questions (ExQ1)	<p>As noted above Requirement 22 of the Draft Development Consent Order does not include any specific requirement for noise, vibration, dust or air quality monitoring.</p> <p>No independent monitoring of the Code of Construction Practice is required under commitment 22. The implementation and operation of the construction activities with respect noise, vibration and dust should be subject to independent audit and monitoring by a competent person. This will provide transparency and community reassurance that traffic impacts are being minimised. This audit and monitoring should be funded by the developer to reduce the burden on the LPA.</p>	Please see the Applicant's response above to reference 2.1.14 .

Ref	Deadline 3 Applicant's information / submission	HDC Response to Deadline 3 Information/Submission	Applicant's comments
		<p>This is of critical importance given that section 8 to Part 2 of the DCO “<i>Defence to proceedings in respect of statutory nuisance</i>” removes the power for local authority to take action for nuisance and also under the provisions of the for controlling construction noise set out in the Control, of Pollution Act. Effective ongoing monitoring is therefore a key requirement for the enforcement of the provisions Code of construction practice.</p>	
2.1.36	[REP3-003] Draft Development Consent Order Rev D	<p>HDC welcomes the changes made to parameter 8 - detailed design approval onshore substation, works no 16.</p> <p>(b) The commitment that the building will not exceed 28.75m above OD (instead of 12.5m above FFL) gives certainty that the final positioning of the building will not exceed this value, independent of the final finish floor level once detail design is carry out. The LPA is now satisfied that the worst-case scenario has been assessed within the LVIA.</p> <p>(e) similarly light protections masts are now referenced as maximum 34.25 above OD instead of 18m above FFL.</p> <p>Notwithstanding, the applicant is encouraged in exploring the reduction of the FFL and or building design as detail design progresses as this would reduce identified visual impacts.</p> <p>Schedule 13 Hedgerows, lists at part 1 the removal of hedgerows and Part 2, the removal of important hedgerows. Minor inconsistencies were found between the list and Tree Preservation Order and Hedgerow Plans Rev B (PEPD-007). This list is likely to expand if checked against the revised vegetation removal as result of construction/operational accesses design. HDC will welcome this list to be updated against the new document requested by the examining authority where all vegetation retention and removal is to be shown in one place.</p>	<p>The Applicant notes and welcomes these comments. The commitment that the building will not exceed 28.75m above Ordnance Datum (mAOD) is a maximum limit.</p> <p>In response to point (e) the Design and Access Statement [REP3-013], has been updated at Deadline 5 and Table 3-1, Landscape Principles, LV12 includes architectural strategy to ensure that the “<i>architectural form of the substation buildings and roofline are to be designed for its functional requirements along with its visual appearance in order to soften and reduce the visual impact of the substation from nearby receptors</i>”. Therefore, opportunities to reduce the visual impact will be explored subject to functional requirements.</p> <p>The Applicant notes Horsham District Council’s comments in respect of Schedule 13 Hedgerows within the Draft Development Consent Order [REP4-004] and Tree Preservation Order and Hedgerow Plan [REP4-003] both of which have been updated at Deadline 5.</p>
Appendix 2: HDC Response to the Applicant’s draft S106 Agreement received Deadline 3			<p>The Applicant thanks Horsham District Council for the information provided. The Applicant and Horsham District Council continue to engage on the contents of the Section 106 Agreement.</p>

Table 2-3 Applicant's comments to South Downs National Park Authority's Deadline 4 submissions

Ref	Deadline 4 submission	Applicant's comments		
2.3.1	The South Downs National Park Authority (SDNPA) response comprises detailed comments in respect of: <ul style="list-style-type: none"> • SDNPA Responses to ISH2 Action Points (Appendix A) • SDNPA post-hearing submissions (Appendix B) • SDNPA comments on Applicants response to ExA Written Questions (Appendix C) • SDNPA comments on other Deadline 3 Submissions (Appendix D) 	Noted, the Applicant has no further comments at this stage.		
2.3.2	<u>Summary</u> Whilst there has been some further information provided, seeking to overcome issues raised by the SDNPA, there remains fundamental concerns that the residual effects on the South Downs National Park (SDNP) overall are so significant, they would compromise the purposes of designation. We have sought to be proactive and recommend how this could be overcome, through the details provided in this response.	The Applicant notes the response from South Downs National Park Authority and has provided comments to the details provided in this response.		
2.3.3	<u>Section 106 Agreement</u> The Applicant and SDNPA have been in discussions regarding the Heads of Terms for a Section 106 Agreement. We provided comments to the applicant on 24 April 2024 on the version submitted at Deadline 3. We will continue to work with the applicant to reach agreement on these. The SDNPA and Applicant remain in dialogue, in order to continue to identify areas of agreement and potential steps to resolve ongoing areas of concern. We will continue to engage with the applicant to progress the Statement of Common Ground and seek to reduce the number of Principal Areas of Disagreement.	The Applicant confirms discussions have been held with the South Downs National Park Authority regarding Heads of Terms for an agreement to secure payment of a fund to South Downs National Park Authority to compensate for residual effects. The Applicant will continue to engage with the South Downs National Park Authority to progress the Statement of Common Ground and seek to reduce the number of Principal Areas of Disagreement.		
2.3.4	Appendix A Response from the South Downs National Park Authority to the Examining Authority's Action Points from Issue Specific Hearing 2 (ISH2) The South Downs National Park Authority's (SDNPA) response to the relevant actions are contained in the table below, against the Examining Authority's original action point for ease of reference. These responses are provided for Deadline 4 of the examination (03 June 2024)			
	Action Point	Description	SDNPA response	Applicant's comments
	3	Applicant to consider providing an Outline Biodiversity Management Plan/Strategy and respond at D4.	The SDNPA support the request for this document. It would give clear assurance that net loss of biodiversity – including matters relating to severance and protected species – were being mitigated and managed in accordance with the mitigation hierarchy. It would also ensure that the SDNPA could identify the mitigation taking place within its boundaries and whether this is meeting the higher bar for conserving and enhancing within its limits, as has been suggested in our earlier submissions, including in response to ExA Question TE1.10 and TE1.11 [REP3-071].	The Applicant considers that, in line with a number of stage specific plans that are to be provided under Requirement 22 (5) of the Draft Development Consent Order [REP4-004] (updated at Deadline 5), that the outline information with which a stage specific plan must accord is already detailed within the DCO Application documents. The Applicant has provided a detailed response to Agenda Item 2 Onshore Ecology, Action Point 3 (provision of Outline Biodiversity Management Plan/Strategy) within the Deadline 4 Submission – 8.70 Applicant's Response to Action Points Arising from Issue Specific Hearing 2 and Compulsory Acquisition Hearing 1 [REP4-074] .
	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	The SDNPA also support this request and have made further comments in Appendix D of this submission	The Applicant has provided responses below to the South Downs National Park Authority's comments on other Deadline 3 submissions (Appendix D) (references 2.3.19 to 2.3.47).

Ref	Deadline 4 submission	Applicant's comments
34	<p>Transmission Owner (OFTO) 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.</p> <p>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.</p>	<p>We have made some additional suggestions as to how the OLEMP in particular could be strengthened in order to help resolve this matter in Appendix D.</p> <p>The Applicant has provided responses below to the South Downs National Park Authority's comments on the Outline Landscape and Ecology Management Plan [REP4-047] (Appendix D) (references 2.3.38 to 2.3.42).</p>
37	<p>SDNPA to consider if seascape is reason to refuse the proposals.</p>	<p>The SDNPA consider that subject to the points below, 'seascape' would not be a singular issue on which to withhold consent:</p> <ul style="list-style-type: none"> • Additional controls secured in the draft DCO regarding the layout and design of the array to have regard to National Park Purposes (and to be agreed in writing by the Secretary of State); and • A substantial financial contribution is secured as part of a Section 106 Agreement, to provide funds for projects to mitigate and compensate for the significant adverse landscape and seascape effects of the array. <p>The Applicant welcomes this clarification from the South Downs National Park Authority. As regards the matters raised:</p> <ul style="list-style-type: none"> • The Applicant refers the Examining Authority to its response to Action Point 35 arising from ISH2 in Deadline 4 Submission – 8.70 Applicant's Response to Action Points Arising from Issue Specific Hearing 2 and Compulsory Acquisition Hearing 1 [REP4-074]. The Draft Development Consent Order (dDCO) [REP4-004] (updated at Deadline 5) contains a number of controls over the final design and layout and each of the outline control documents secured through conditions of the deemed marine licenses (DMLs) require the Applicant to indicate how the detailed submissions seek to further the purposes of the National Park. These controls include: <ul style="list-style-type: none"> ○ Requirement 2(2) dDCO/condition 1(2) in the generation DML which specify turbine dimensions, minimum spacing and that all turbines must be of the same height and rotor diameter. ○ Requirement 3(2) dDCO/condition 1(2) in the transmission DML which specifies the dimensions of the offshore substations and then prevents them from being located within 500m of the array periphery. ○ Limitations on the area within which turbines and substations may be located as set out in paragraphs 2 and of the generation and transmission DMLs respectively. ○ Condition 11 of the DMLs which requires the submission and approval of a Design Plan for (inter alia) turbine and substation locations; turbine numbers, specifications and dimensions; and exclusion zones arising as a result constraints and ground conditions identified post-consent.

Ref	Deadline 4 submission	Applicant's comments
		<p>The Applicant therefore considers that by virtue of the matters secured through the terms of the dDCO and DMLs and through the operation of the statutory regimes set out in s11A in National Parks and Access to the Countryside Act 1949 both in granting the DCO and DML on such terms and in the subsequent discharging of the DML conditions that the project will have had regard to furthering the purpose of the National Park.</p> <ul style="list-style-type: none"> The Applicant continues to liaise with the Authority concerning the terms of the proposed s106 Agreement which it is envisaged will be completed in accordance with the protocols secured through requirement 41 of the draft DCO submitted at Deadline 5. At this stage, the Applicant can confirm that it has agreed with the Authority a list of projects to which the contribution could be applied and which would further the purposes of the National Park together with the establishment of a steering committee which would administer the fund.
50	<p>The Applicant to outline the proposed strategy for maintaining the safe passage of pedestrians, cyclists and horse riders along Michelgrove Lane during construction activities.</p>	<p>The SDNPA would like to suggest this strategy goes further and includes the whole construction traffic route proposed from A26-A28, given it makes use of multiple Public Rights of Way in this area, of which many are to remain open during construction.</p>
60	<p>West Sussex County Council / the Applicant to consider and respond on possible alterations to Requirement 19 and related Commitments, C-79, C225 with the scope of removing ambiguity in respect to trial trenching. West Sussex to respond to the submitted Written Scheme of Investigation.</p>	<p>The SDNPA has liaised with West Sussex County Council (WSCC) to provide further comments on the submitted Written Scheme of Investigation. We therefore support the response provided by WSCC on this matter.</p>
62	<p>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.</p>	<p>SDNPA accepts that these matters can better be addressed in Requirements. However, for the reasons explained elsewhere it maintains concerns about the content of the control documents and Commitments Register, and accordingly the efficacy of the Requirements as a whole in addressing the impacts on the SDNPA</p>
		<p>The Applicant has provided a response to this item in Deadline 4 Submission – 8.70 Applicant's Response to Action Points Arising from Issue Specific Hearing 2 and Compulsory Acquisition Hearing 1 [REP4-074] (submitted at Deadline 4), see PINS reference 50.</p> <p>The Applicant has provided detailed responses to West Sussex County Council's comments with respect to Action Point 60 (Issue Specific Hearing 2) and the Outline Onshore Written Scheme of Investigation [REP3-035] in reference 2.3.91 to 2.3.141. The Outline Onshore Written Scheme of Investigation [REP3-035], commitment C-225 (Commitments Register [REP4-057]) and Requirement 19 of the Draft Development Consent Order [REP4-004] have been updated in response to West Sussex County Council's suggested wording.</p> <p>The Applicant considers that the matters are adequately secured through the existing requirements and control documents including in particular Requirement 22 to submit stage specific Codes of Construction Practice which must accord with the Outline Code of Construction Practice [REP4-043] updated at Deadline 5 and to implement the same, and new requirement 40 for the submission for approval of composite stage specific Vegetation Retention and Removal Plans which accord with the Outline Vegetation Retention and Removal Plan (Document Reference: 8.87) submitted at Deadline 5.</p>

Ref	Deadline 4 submission	Applicant's comments
2.3.5	<p>Appendix B – Post Hearing Submissions (summary of oral representations) <u>Onshore ecology</u></p> <p>1. SDNPA explained various concerns in respect of the approach to onshore ecology including:</p> <ol style="list-style-type: none"> The absence of a specific biodiversity management plan with detailed explanation of how impacts on biodiversity interests would be avoided and mitigated. The OLEMP is not well-suited to this purpose and lacks sufficient detail to ensure that biodiversity is prioritised. The applicant's focus on an assessment of biodiversity net gain risks moving to the third stage of the mitigation hierarchy (compensation) without properly taking up opportunities to avoid impacts and mitigate for them. Measures secured by the DCO should seek to ensure no net loss to biodiversity. SDNPA is concerned that the ES has not been updated to reflect more recent species surveys. This means that the measures necessary to avoid impacts and secure appropriate mitigation are absent. Again, reliance on later BNG assessments moves wrongly to the question of compensation for losses. 	<p>a) In respect of the Biodiversity Management Plan, the Applicant confirmed in the Applicant's Post Hearing Submission – Issue Specific Hearing 2 [REP4-072] that the information which would be contained within that plan is already set out in the Outline Code of Construction Plan [REP4-043] and, to a lesser extent, the Outline Landscape and Ecology Management Plan [REP4-047]. The Biodiversity Management Plan will be a construction stage specific document that is focused on:</p> <ul style="list-style-type: none"> Compliance with relevant wildlife legislation; Implementation of commitments (Commitments Register [REP4-047]) (updated at Deadline 5) with regards to biodiversity; The required pre-commencement ecological surveys; and The role of the Ecological Clerk of Works. <p>b) The Applicant is of the position that the securing of the measures described in the Outline Code of Construction Plan [REP4-043] and, to a lesser extent, the Outline Landscape and Ecology Management Plan [REP4-047] (updated at Deadline 5) and in Appendix 22.15: Biodiversity Net Gain Information, Volume 4 of the Environmental Statement (ES) [REP3-019] (updated at Deadline 5) provide the mechanisms required to ensure losses are avoided where possible, minimised where not, that appropriate mitigation is provided and that compensation ('no net loss') is provided through a mixture of habitat reinstatement and habitat creation within the draft Order Limits. Furthermore, the Proposed Development would exceed this by delivering biodiversity net gain (BNG) (with a substantial portion front loaded) of at least 10%. These measures are secured through Requirements 12, 13, 14, 22 and 40 of the Draft Development Consent Order [REP4-004].</p> <p>Recent species surveys were included in Chapter 22: Terrestrial ecology and nature conservation, Volume 2 of the ES [REP4-022] at Deadline 4. As described, the survey results gathered on bats and dormouse did not alter the assessment provided.</p>
2.3.6	<p>2 It is not agreed that approach in the Yorkshire Green DCO is comparable to that carried out by the Applicant because:</p> <ol style="list-style-type: none"> The Yorkshire Green project was at an advanced design stage well beyond the current proposal. A biodiversity mitigation strategy in its final form was secured under the DCO and was a certified document. This formed part of the construction management plans for the project (see requirement 5 of the Yorkshire Green DCO). <p>Net gain was not relied upon by the applicant as justification for granting development consent. Rather, a project wide commitment to secure net gain was made as part of the S106 agreement with relevant planning authorities in addition to the measures secured under the DCO through the biodiversity mitigation strategy.</p>	<p>The Applicant has provided the Yorkshire Green Development Consent Order as a comparator because of the way in which biodiversity net gain (BNG) is considered on that project with regards approach to methodology and delivery along a linear corridor where land is owned and managed by third parties. It is noted that this position is not particularly different to the mandatory system where off-site units do not necessarily need to be identified at the application stage and are instead tied to a pre-commencement planning condition.</p> <p>The Applicant has held discussions with a range of landowners, stakeholders (including the South Downs National Park Authority), strategic projects and habitat banks. This has highlighted that there is good potential to deliver BNG</p>

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2.3.7	<p>3. In respect of Kitpease Copse, the question is whether trenchless techniques are technically feasible, not whether Southern Water and/or the Environment Agency would prefer open cut. Southern Water Services have provided a response [REP3- 130] which does not dismiss alternative construction methodologies, subject to a Hydrogeological Risk Assessment. That risk assessment should be completed and shared with the examination.</p>	<p>within or close to the proposed DCO Order Limits. It is also noted that proposed Section 106 funding to be provided for landscape and visual residual effects will also provide a secondary benefit through creation of habitats that would support a range of flora and fauna. Overall, the outcome of the delivery of the transmission cables through the South Downs National Park will result in greater amounts of biodiverse habitat within the South Downs National Park that is managed sympathetically for wildlife.</p> <p>The Applicant covered this matter in its Deadline 4 response to West Sussex County Council's Deadline 3 submission (reference 2.1.66 in Table 2-1 within Deadline 4 Submission – 8.66 Applicant's Comments on Deadline 3 Submissions REP4-070). In its Deadline 4 submission, Southern Water [REP4-126] has since provided further comment on this point and stated that it can confirm that it would find a trenchless crossing in the Kitpease Copse area problematic due to the hydrogeological sensitivity of the area and the proximity to its groundwater abstraction. Southern Water also further clarified that the trenchless crossing method has greater risk than an open cut method at this particular location.</p> <p>This knowledge and understanding is consistent with the relevant parts of the Appendix 26.4: Hydrogeological Risk Assessment, Volume 4 of the Environmental Statement (ES) [APP-218] that covers potential receptors, hydrogeological pathways and conceptual models in the vicinity of the Kitpease Copse area and emphasises the key sensitivities in that locality. Also, the types of potential effects from trenchless crossing works are also documented elsewhere within the Appendix 26.4: Hydrogeological Risk Assessment, Volume 4 of the ES [APP-218] and further aid that understanding.</p> <p>The mitigation hierarchy has been appropriately followed in relation to both the water environment, and terrestrial ecology to ensure that a proportionate and balanced approach has been taken. The selection of an open cut trenching rather than a trenchless crossing is part of this mitigation. Due to the highly sensitive nature of the hydrogeological conditions, open cut trenching has also been selected as the most appropriate crossing methodology at Kitpease Copse and there has been a reduction in the working width of the temporary onshore construction cable corridor at this specific crossing location.</p> <p>Although there was not a further request made by the Examining Authority within the Action Points arising from Issue Specific Hearing 2 (ISH2) [EV5-018], the following points provide a summary of the key points of the risk assessment in relation to this matter.</p> <p>Potential risk pathways are documented in paragraphs 5.2.2 – 5.2.4 of the Appendix 26.4: Hydrogeological Risk Assessment, Volume 4 of the ES [APP-218].</p>

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		<p><i>“The main contaminant and sediment risk pathway is from the surface to the natural Chalk system by vertical flow in the unsaturated zone and lateral flow in the saturated zone. The thin soils present and exposed Chalk do not retain pollutants and sediments such that downward flow can occur into the unsaturated zone and ultimately to the water table. The Chalk is a dual porosity system which means that although it has many rapid pathways (fissures) available for contaminants and sediments to travel along, the bulk of the water present is within the matrix. In the saturated zone contaminants can move very rapidly and across long distances through fissures (karstic flow) and more slowly within the matrix by diffusion. The presence of extensive fissuring also provides the pathway for the transmission of excavation dewatering impacts.”</i></p> <p>Furthermore:</p> <p><i>“Additional risk pathways can be created by the proposed works. For instance, incorrectly constructed and sealed deep HDD may result in additional vertical pathways within the unsaturated zone that can intersect existing fractures and karstic features.”</i></p> <p>Potential effects are identified in Table 5-1 of the Appendix 26.4: Hydrogeological Risk Assessment, Volume 4 of the ES [APP-218]. This identifies on-site sources and pathways that have the potential to cause effects during construction. Trenchless crossing activities are identified in that table.</p> <p>The potential impacts and serious consequences from a trenchless crossing are clearly higher than open cut trenching due to potentially large-scale disruption and impacts on the quantity and / or quality of a regionally important water supply in a populated and water stressed area.</p> <p>Tables 5-2 to 5-4 of the Appendix 26.4: Hydrogeological Risk Assessment, Volume 4 of the ES [APP-218] present a range of criteria for likelihood, consequences and risk matrix. Trenchless crossing would be anticipated to increase the likelihood, consequence and resultant risk at the Kitpease Copse crossing beyond that of the Applicant's design for open cut trenching proposals. This is on the basis that drilling activities are likely to increase the potential for interception of existing fractures and karstic features that are known to provide rapid pathways for contaminants, which when combined with the serious consequences of disruption to a regionally important water supply could lead to a potentially significant effect.</p>
2.3.8	<p><u>Seascape and landscape</u></p> <p>4. SDNPA emphasises that the impact on the SDNP arises from a combination of the effects on seascape from the construction and operation of the array, and the direct impacts on the SDNP. The in-combination impacts on the designation need to be taken into account and minimised, mitigated, and compensated for.</p>	<p>The Applicant agrees that the impact on the South Downs National Park arises from the effects on seascape from the construction and operation of the offshore array, and the direct landscape effects arising during construction of the onshore cable corridor. With regards to minimisation, mitigation and compensation of these in-combination effects, the Applicant refers to the measures secured in the Draft Development Consent Order [REP4-004],</p>

Ref	Deadline 4 submission	Applicant's comments
2.3.9	5 The strengthened statutory duty in s 11A National Parks and Access to the Countryside Act 1949 needs to be considered at each stage of the mitigation hierarchy.	<p>the various control documents including Outline Code of Construction Practice [REP4-041], Outline Landscape and Ecology Management Plan [REP4-047], Outline Project Environmental Management Plan [REP4-049], Commitments Register [REP4-057] and the Draft s106 Agreement with SDNPA [REP4-077].</p> <p>The mitigation hierarchy will be applied during the detailed design phase (commitment C-292 in the Outline Code of Construction Practice [REP4-043], which in turn is secured through Requirement 22 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5).</p> <p>The Applicant notes that the Outline Code of Construction Practice [REP4-043] was updated at Deadline 4 (further updated at Deadline 5) to include a new paragraph (paragraph 2.2.5) that states:</p> <p><i>"This Outline CoCP and the embedded environmental measures described above have been developed to apply high environmental standards across the onshore cable route to avoid, reduce and minimise impacts arising from construction. This includes measures developed that seek to further the purposes of the National Park which require the conserving and enhancement of the natural beauty, wildlife and cultural heritage of the areas as well as promoting opportunities for the understanding and enjoyment of its special qualities."</i></p>
2.3.10	6. In respect of seascape, the dDCO would authorise a design envelope in which the array could be delivered. However, the design of the array within those parameters is in no way controlled to minimise impacts on the SDNP. The design of the array would not, as the dDCO is currently drafted, be subject to any further approvals relevant to impacts on the SDNP. This should be addressed to ensure that the array is designed to minimise, so far as is practicable, the adverse impacts on the SDNP. Without such a measure it is difficult to see how the Secretary of State can be sure that the statutory duty to seek to further the statutory objectives is met.	<p>Please see the Applicant's response to Action Point 35 arising from ISH2 in Deadline 4 Submission – 8.70 Applicant's Response to Action Points Arising from Issue Specific Hearing 2 and Compulsory Acquisition Hearing 1 [REP4-074] and its response at reference 2.3.4 action point 37 above.</p>
2.3.11	7. In respect of the landscape of the SDNP, the relevant control documents (OLEMP and OCoCP, and the Commitments Register) do not spell out the need to further the statutory objectives of the SDNP to ensure that in the construction of the scheme and the delivery of mitigation the SDNP's Special Qualities are given their statutory priority. These documents, and the commitments in them, are no different in substance from such documents used for similar schemes outside of National Landscapes. The Applicant should take further steps to develop a coherent set of control documents which reflect in terms the relevant statutory duties. Further, in common with the A66 Transpennine DCO, the statutory duty should be reflected on the face of the dDCO.	<p>The Applicant has provided a response to Action Points 7, 34, 35, and 61 following Issue Specific Hearing 2 regarding the special qualities of the South Down National Park Authority in response to Action Point 55 in Deadline 4 Submission – 8.70 Applicant's Response to Action Points Arising from Issue Specific Hearing 2 and Compulsory Acquisition Hearing 1 [REP4-074]. Further to this, the Applicant updated Section 1.3 of the Outline Landscape and Ecology Management Plan [REP4-047] and Section 2.2 of the Outline Code of Construction Practice [REP4-043] at Deadline 4 to include context regarding the Proposed Development's measures that have been developed to further the purposes of the National Park.</p>
2.3.12	8. SDNPA will await the Applicant's further consideration of these points in an updated dDCO.	<p>As outlined at references 2.3.10 and 2.3.11, these points are covered in control documents, and therefore it is not necessary to update the draft Development Consent Order.</p>

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2.3.13	9. It is common ground that there are residual adverse effects on the SDNP and accordingly it is necessary to consider the provision of compensation. Discussions are ongoing in respect of a S106 agreement to secure a compensation package. These discussions will be reported back to the Examination.	With regards to furtherance of the purposes of the South Downs National Park, the Applicant has sought to further the purposes of the South Downs National Park and provide compensation through the measures secured in the Draft Development Consent Order [REP4-004] (updated at Deadline 5) and the Draft s106 Agreement with SDNPA [REP4-077] . As noted by the South Downs National Park Authority, these discussions with regards to compensation to further the purposes of the South Downs National Park are ongoing and will be reported back to the Examining Authority.										
2.3.14	<p><u>Transport and Access</u></p> <p>10. The SDNPA has explained its concerns relating to access A-28, which appears unsuitable as an intensively used construction access. Whilst there is an existing bellmouth, the access then follows an overgrown track, and runs immediately adjacent to Scheduled Ancient Monument of considerable historical significance (a Roman hill fort with historical importance dating back to the Iron Age). The access creates a "loop" of c. 10km of construction access routes through a highly sensitive part of the SDNP. The Applicant should reconsider the use of this access altogether, including considering whether a design to accommodate the necessary turning movements could be achieved at access A-26</p>	This item was raised during Issue Specific Hearing 2 and the Applicant has provided a response to this in Deadline 4 Submission – 8.70 Applicant's Response to Action Points Arising from Issue Specific Hearing 2 and Compulsory Acquisition Hearing 1 [REP4-074] (submitted at Deadline 4), see PINS reference 51.										
2.3.15	11. The use of access A-26 requires careful consideration of the interaction between construction traffic and recreational users.	The Applicant can confirm that an updated version of the Construction Accesses A-26, A-28, A-61 and A-64 Traffic Management Strategies was included within Appendix D of the Outline Construction Traffic Management Plan [REP4-045] . This includes further information on how interactions between construction traffic and recreational users will be managed.										
2.3.16	<p><u>Archaeology</u></p> <p>12. The Order Limits thread through a landscape of at least national and likely international historical significance. The identification of the spatial limits for Scheduled Monuments does not indicate the likely extent of archaeological interest. The approach taken by the Applicant to date, in failing to carry out proper investigations, is inadequate to allow a proper assessment of significance. SDNPA supports WSCC's request for further investigation prior to the grant of development consent.</p>	Please see the explanation and justification of the approach to surveys set out within the Applicant's Response to Action Point 59 within Appendix B of the Deadline 4 Submission – 8.70 Applicant's Response to Action Points Arising from Issue Specific Hearing 2 and Compulsory Acquisition Hearing 1 [REP4-074] .										
2.3.17	<p>Appendix C – SDNPA Comments on Applicant's response to ExA Written Questions</p> <p>The SDNPA's response to the majority of the Applicant's responses has been outlined in Appendix B of this Deadline 4 submission. Comments on specific documents provided at Deadline 3 and referred to in the Applicant's response have been provided in Appendix D. The table below provides further clarification around a number of key issues and should be read alongside our earlier submissions.</p>	The Applicant has provided responses to comments from the South Downs National Park Authority in Appendix B above (references 2.3.5 to 2.3.16) and below in Appendix D (references 2.3.19 to 2.3.47).										
2.3.18	<table border="1"> <thead> <tr> <th>ExA Question Ref</th> <th>Question</th> <th>Applicant's response</th> <th>SDNPA response</th> <th>Applicant's comments</th> </tr> </thead> <tbody> <tr> <td>BD1.9</td> <td>Provide calculations for the losses</td> <td>Appendix 22.15: Biodiversity Net Gain Information, Volume 4 of the Environmental Statement (ES) [REP3-</td> <td>The SDNPA note that applicant has recognised their approach has resulted in double counting. This</td> <td>The Applicant has updated Appendix 22.15: Biodiversity Net Gain Information, Volume 4 of the Environmental Statement (ES) at Deadline 5 to split Arun District and Horsham District areas when outside of the South</td> </tr> </tbody> </table>	ExA Question Ref	Question	Applicant's response	SDNPA response	Applicant's comments	BD1.9	Provide calculations for the losses	Appendix 22.15: Biodiversity Net Gain Information, Volume 4 of the Environmental Statement (ES) [REP3-	The SDNPA note that applicant has recognised their approach has resulted in double counting. This	The Applicant has updated Appendix 22.15: Biodiversity Net Gain Information, Volume 4 of the Environmental Statement (ES) at Deadline 5 to split Arun District and Horsham District areas when outside of the South	
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	<p>of biodiversity for the Proposed Development within: The Arun DC area; The Horsham DC area; and The SDNPA area</p> <p>019] has been updated using the Statutory Biodiversity Metric and broken down by local authority area. Separate results are also provided for the South Downs National Park. Accompanying the updated Appendix are the Statutory Biodiversity Metric workbooks for Arun District Council area, Horsham District Council area and Mid-Sussex District Council area. A separate workbook is also provided for the South Downs National Park but it should be noted that this includes some of the losses and gains within both Arun District and Horsham District and therefore care must be taken to avoid double counting. It should also be taken into consideration that all of the workbooks show error messages. This is simply based on two factors: Biodiversity net gain (BNG) of at least 10% is not demonstrated in the workbooks, as per the approach taken in Appendix 22.15: Biodiversity Net Gain Information, Volume 4 of the ES [REP3-019]; and Trading rules are not being satisfied. This is an inevitable consequence of BNG of at least 10% not being demonstrated. At the detailed design stage workbooks will include the biodiversity units identified.</p>	<p>could be remedied by revising the workbooks to reflect Local Planning Authority areas, rather than District areas (as there would not be an overlap). As previously advised, the applicant should submit the Excel worksheets to each Local Planning Authority for interrogation, not just .pdf files. The associated condition assessment sheets are also required as these are a mandatory part of the Statutory Metric being applied. Currently, and as alluded to in ISH2, the SDNPA is unable to discern whether the 10% or the Trading Rules are being satisfied (i.e. making sure they are replacing like for like or better) because information on where the deficit in units will be located has not been provided. In terms of temporary losses, these aren't included in the Exemption Regulations but are instead included within the Statutory BNG Metric User Guide under 'accounting for temporary losses'. Provided the habitat and area can be restored to baseline habitat type and condition within two years of the initial impact, the applicant does not need to record a habitat as lost, and that habitat can be excluded from calculations, i.e. it is treated as not being impacted and therefore not subject to BNG. Recent Natural England advice via the (Planning Advisory Service BNG Forum) is that <i>"it is important to consider whether the habitat type and condition being proposed for the temporary impact can be realistically restored to the baseline habitat type and condition within 2 years. If that is not possible then it will be subject to mandatory BNG under Schedule 7A of the Town and Country Planning Act 1990 (as</i></p> <p>Downs National Park. This ensures Arun District, the South Downs National Park Authority and Horsham District can further understand the losses and gains in the area within which they will be responsible for the agreement of stage specific biodiversity net gain strategies via Requirement 14 of the Draft Development Consent Order [REP4-004].</p> <p>The South Downs National Park Authority is requesting condition assessment sheets for each area of habitat within the onshore part of the proposed DCO Order Limits. It is noted in Appendix 22.15: Biodiversity Net Gain Information, Volume 4 of the ES that it was not possible to deliver habitat condition assessment within the form that is now taken within the Statutory Biodiversity Metric as the surveys began in 2020 when the version of the metric in use was 2.0 (and subsequently evolved through 3.1, 3.2 and 4.0). However, commitment C-294 ensures that an up-to-date habitat survey using the habitat condition assessment associated with the Statutory Biodiversity Metric will be used to inform both detailed design and the associated updates to the biodiversity net gain (BNG) calculations.</p> <p>The South Downs National Park Authority note that they cannot discern whether the 10% BNG or the trading rules are being met. Appendix 22.15: Biodiversity Net Gain Information, Volume 4 of the ES is clear that there is a unit deficit. This means that the on-site measures (reinstatement and habitat creation) do not provide adequate numbers of units to deliver either a no net loss or a BNG. As a result of this, it is clear that neither the trading rules or a BNG of at least 10% is detailed. As described, this would be achieved through the purchase of biodiversity units from landowners, habitat banks, brokers etc. The Applicant notes that recent discussions have been held with a number of land owners regarding the potential for the delivery of BNG within their landholding.</p> <p>South Downs National Planning Authority note that if a habitat can be reinstated to current condition within two years it does not need to be considered as lost. However, as noted in paragraph 4.1.7 of Appendix 22.15: Biodiversity Net Gain Information, Volume 4 of the ES, as none of the temporary habitat loss can be guaranteed to begin within two years, and it takes time to achieve target condition, all habitats crossed are assumed to be lost and the reinstatement is considered as creation. Therefore, South Downs National Park Authority can rest assured that all habitats within the indicative temporary working area as described in paragraph 3.1.7 of Appendix 22.15: Biodiversity Net Gain Information, Volume 4 of the ES have been included in the calculations which have been shared in Microsoft Excel versions of the BNG calculations with South Downs National Park Authority in July 2024.</p> <p>South Downs National Park Authority would like a more granular approach to the recording of habitat parcels. This suggests that the metric worksheet should have a single line for each habitat polygon potentially affected. This</p>

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	<p><i>inserted by Schedule 14 of the Environment Act 2021).</i>"</p> <p>BNG 'exemption' may not apply if high/very high distinctiveness habitats or moderate or higher habitats in good condition are being temporarily impacted for example, due to the difficulty in creating/restoring these types of habitats. The applicant has not broken the calculations down into habitat parcels (or highlighted those areas of discrete high/very high distinctiveness) and has instead conflated them into overall habitat areas within the Metric. This means that some habitats within the SDNP may have erroneously been accounted as temporary loss, reducing the necessity for compensation and enhancement. A more granular approach to recording the habitat parcels in the SDNP is an example of where it could be more clearly demonstrated what the likely effects of the proposed development are on the ecological features of the SDNP in the context of its elevated status. It would then enable the applicant to demonstrate how the purposes of the SDNP in respect of its ecological function could be furthered by the proposed development.</p>	<p>will be the approach taken at detailed design when each stage will be more discrete, but at present the number of spreadsheet lines this would create would be greater than the maximum allowed for in the Statutory Metric Workbook. The Applicant is also of the opinion that it does not provide useful additional information. Currently the calculations provide a good understanding of the type of units lost and the size of the shortfall. This provides the necessary information to determine the likelihood of delivery of BNG within each relevant local planning authority.</p>
SLV 1.7	<p>Comment upon Natural England's assertions at table 1 in response to ExA Q6.1 [REP2-039] in relation to the impact of Special Quality 3 that for the coastal</p> <p>The Applicant refers to the submission at Deadline 1 of the post hearing submission Deadline 1 Submission – 8.25.5 Applicant's Post Hearing Submission – Issue Specific Hearing 1: Appendix 5 – Further information on Action Point 27 – South Downs National Park [REP1- 024], which provides further assessment of the Offshore elements of the Proposed Development on Special Quality 3 'Tranquil and unspoilt places'. Areas of relative tranquillity within the South Downs</p>	<p>The Applicant seems to be implying that the absence of factors from the list at Appendix 2 of the SDNP Tranquillity Study reduces the tranquillity, which is a misinterpretation. Chalk downland by its very nature would not include 'trees or woodland' yet can (and indeed does) achieve high tranquillity in many cases. Reference is made to busy periods, with many cars and people present, but this is not the case on all occasions. Cars are only</p> <p>The Applicant considers that the '<i>visual discord and incoherence</i>' of the Rampion 2 array has been minimised in views from the Sussex Heritage Coast in particular through the project design and that there is a relative balance in perspective and coherency in appearance with the juxtaposition of larger Rampion 2 wind turbine generators (WTGs) in front of smaller Rampion 1 WTGs avoided, when viewed from key views such as Viewpoint 1 Beachy Head and Viewpoint 2 Birling Gap (outlined in Figure 15.26 and Figure 15.27 respectively of Chapter 15: Seascape, landscape and visual impact assessment – Figures (Part 4 of 8), Volume 3 of the Environmental Statement (ES) [APP-091]) due to the embedded design principles that have shaped the spatial extent of the proposed DCO Order Limits. The Applicant considers that the design of the Proposed Development has minimised effects on the relative tranquillity experienced</p>

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	<p>parts and the Sussex Heritage Coast the assessment of significance will be significant (major) rather than not significant (moderate) Section 15.15 ES chapter 15 Seascape [APP-056]</p> <p>National Park (SDNP) are mapped in Appendix 1 of the SDNP Tranquillity Study (South Downs National Park Authority (SDNPA), 2017). It is noted that the tranquillity score for the coastal parts of the Sussex Heritage Coast is not generally within the range of the highest tranquillity scores and is generally in the medium to medium-high range. There are positive tranquillity factors relating to the natural landscape, wide open spaces, extensive views to the sea and perceived wildness/remoteness, however there is also an absence of other factors that people relate to tranquillity as there are few trees/nature woodland in the chalk downland landscape or streams, river and lakes (Appendix 2, SDNPA, 2017) and at times there are many people and cars present at key sites (Birling Gap, Beachy Head, Cuckmere Haven) and walking routes (South Downs Way). The offshore wind turbine generators (WTGs) of Rampion 2 will introduce some changes to the tranquillity experienced in sea views, as an array of additional built/modern elements, which interrupt and define a further presence in the aspect out to sea through the apparent height, spread and movement of the WTGs rotor blades. The visual movement of the rotor blades incorporates a kinetic element, however it is an already dynamic seascape and the relatively slow visual movement of the WTG rotors and WTG scale at long distance limits the potential changes in perceived tranquillity. The Applicant considers that the additional presence of further WTGs with slow and consistent visual movement, at such distance outside the Heritage Coast, would not introduce a material sense of unrest, nor disturb the calmness and quietude experienced. On balance, it is considered that the effects on relative</p>	<p>present in very discrete areas (i.e. car parks and roads) within these sites of high tranquillity leaving the majority of the key sites to be experienced without their intrusion. At the Issue Specific Hearing 2, the applicant mentioned the movement already present in the Seascape including boats and waves and implied this lessened the effect of the movement of the turbines. The SDNPA would counter that these two types of elements are expected in a seascape, unlike a WTG array and do not compromise tranquillity. The SDNPA would maintain their position that the visual discord and incoherence of the Rampion 2 array, particularly in the cumulative effects with Rampion 1, has a significant effect on the tranquillity experienced from not only the Sussex Heritage Coast, but from the wider SDNP, as set out in our Written Representation [REP1-052].</p> <p>from the Heritage Coast and maintains its position that effects on tranquillity (Special Quality 3) experienced from the Sussex Heritage Coast, and wider South Downs National Park, are not significant, as set out in Chapter 15: Seascape, landscape and visual impact assessment, Volume 2 of the ES [APP-056] and the Applicant's Post Hearing Submission – Issue Specific Hearing 2 Further Information on the South Downs National Park [REP4-063].</p>

Ref	Deadline 4 submission	Applicant's comments
	<p>tranquillity of the coastal parts of the Sussex Heritage Coast are therefore moderate and not significant. A sense of tranquillity will remain, as the array area would not override the existing naturalistic elements in the landscape, nor its open space and extensive sea views will remain beyond the relatively narrow field of view affected by the Rampion 2 WTGs. The 'feeling of peace and space' referred to in this special quality will also be retained and it is considered that people will continue to experience tranquillity as part of their experience of the Sussex Heritage Coast</p>	
TE 1.1	<p>Ecological Surveys in the Vicinity of the Proposed Substation Location at Oakendene and Cable Route Leading to this Site Provide a detailed explanation of the surveys undertaken at, and in the vicinity of, the proposed substation at Oakendene and the cable route leading to this site around the Cowfold Stream crossing and Cratemans Farm</p> <p>The Applicant states: "<i>Field surveys following Phase 1 habitat survey methodology and hedgerow survey methodology were undertaken in line with guidance (stated as being between late March and mid-October in the Handbook for Phase 1 habitat survey (Joint Nature Conservation Committee (JNCC), 2010 (updated 2016)) in May 2021, August 2021 and again in April 2022.</i>" The Applicant states "<i>Static bat detectors did register faults (as they do regularly) at different times during surveys in 2021 and 2022, but overall there is a large and robust dataset.</i>" The Applicant states "<i>breeding bird surveys followed the British Trust for Ornithology's common bird census methodology, but using a six rather than ten visit programme as is typical for development projects (for example see Bird Survey & Assessment Steering Group. (2023). Bird Survey Guidelines for assessing ecological impacts, v.1.1.1. https://birdsurveyguidelines.org [accessed 16/04/2024].</i>"</p>	<p>The information required for UKHab 2.0 and BNG condition assessment is much more detailed than would normally be collected during a Phase 1 survey visit. Given that the (more detailed) NVC survey sites are no longer included within the DCO Limits, the SDNPA would have expected additional survey visits to have been carried out in 2023/24 to achieve the level of detail required. It is not clear whether these have been undertaken. The Applicant should use historic mapping as part of their hedgerow assessment, to inform their avoidance and mitigation strategy and to identify potential for restoration within their compensation and enhancement proposals. This would again be an example of where the higher status of the SDNP could be reflected.</p> <p>The Applicant undertook habitat survey and collected information on condition as described within Appendix 22.15: Biodiversity Net Gain Information, Volume 4 of the Environmental Statement. It is noted that the approach was typical of that followed at the time when the surveys began in 2020. Whilst it is accurate to note that over time (culminating in the publishing of the Statutory Biodiversity Metric in November 2023) the approach has become more involved and prescribed this is not applicable to the Proposed Development due to its longevity.</p> <p>It is noted that a full habitat survey using a method to deliver all necessary information to inform updated Statutory Biodiversity Metric calculations at the detailed design phase has been committed to in commitment C-294 (Commitments Register [REP4-057]) which is included within the Outline Code of Construction Practice [REP4-043] and secured via Requirement 22 in the Draft Development Consent Order [REP4-004].</p>

Ref	Deadline 4 submission	Applicant's comments
	<p>detailing: a) The type of survey. b) Date and timings undertaken. c) Level of qualifications and experience of those who undertook the surveys. d) Whether they were desktop or field surveys. e) Which guidelines were followed and any deviations from the stated methodology. f) Duration of the survey and frequency of data collection. g) Quality of the data collected, including details such as whether field monitors were in working order throughout. For any desk studies clearly explain the source of the data used.</p>	

Ref	Deadline 4 submission	Applicant's comments
TE 1.10	<p>Protected Species - Hazel Dormouse</p> <p>The Applicant a) The ExA requests an update to the Terrestrial Ecology chapter of the Environmental Statement [APP-063] to include the information from the document submitted into the examination at the PEPD relating to hazel dormouse, [PEPD-030] Environmental Statement Volume 4, Appendix 22.19: Hazel dormouse report 2023 Date: January 2024 Revision A. b) State whether the Best Practice Guidelines outlines in 'The Dormouse Conservation Handbook, Second Edition', have been adhered</p> <p>Chapter 22: Terrestrial ecology and nature conservation, Volume 2 of the Environmental Statement (ES) [APP-063] will be updated for submission at a future Examination Deadline. The Applicant can confirm that the hazel dormouse surveys were in line with The Dormouse Conservation Handbook, Second Edition (Bright et al. 2006) in the locations where they were carried out. The only difference between the approach taken and that of a more typical development (for example for residential dwellings) is that a sampling approach was taken at suitable habitats along the route, as opposed to covering all habitats in which dormouse may potentially occur. The reasons for this were as follows: 1. Surveys were proportionate to the scale of the Proposed Development and based on desk study data that provides no records from within the proposed DCO Order Limits; 2. Approach to mitigation will be consistent across temporary works due to their scale and short duration with displacement of animals through staged habitat removal (as per the Dormouse Conservation Handbook, Second Edition); and 3. Commitment C-232 (secured through the Outline Code of Construction Practice [REP3-025] (updated at Deadline 3) via Requirement 22 of the Draft Development Consent Order [REP3-004] (updated at Deadline 3)) in the Commitments Register [REP3-049] (updated at Deadline 3) ensures that survey of all suitable habitat that will be subject to removal will be surveyed during the detailed design phase. It is also notable that the approach taken was discussed with the Expert Topic Group (ETG) on several occasions (see Appendix C Meeting minutes, Evidence Plan [APP-243] for ETG meetings held 16 March 2021, 08 November 2021 and</p>	<p>The SDNPA consider that the comments made during ISH2 and in our response to ExA Written Questions at Deadline 3 still stand [REP3-071].</p> <p>Whilst an objection was not raised to the principle of the approach proposed to be taken for surveying at pre-application stage, it was also not agreed. Such discussions were at a high-level and prior to the final route being determined. Since submission, as per our Written Representation [REP1-052] and D3 submission [REP3-071], we consider the baseline is lacking. Overall, the applicant has not evolved their approach with reference to new records nor has it properly liaised with nature conservation organisations about species status and distribution in this area.</p> <p>The Applicant refers to their response on legally protected species provided at Deadline 4 in Applicant's Comments on Deadline 3 Submissions [REP4-070], where technical engagement, survey effort, mitigation, compensation and licensing are described.</p> <p>The Applicant has provided a draft Protected Species licence to Natural England in July 2024 with regards hazel dormouse and is working with them to achieve a letter of no impediment.</p>

Ref	Deadline 4 submission	Applicant's comments
	<p>to. If not, has a detailed justification been provided? If not, the ExA requests that one is provided. c) State if the information this new report provides changes any of the conclusion in the Terrestrial Ecology chapter of the Environmental Statement [APP-063]. d) State whether the survey location sites for hazel dormouse have been updated in light of changes to the proposed cable route. Have survey sites been updated in line with best practice?.</p>	<p>07 March 2023). Other technical engagement with various parties (who also formed part of the ETG) including South Downs National Park Authority, West Sussex County Council and Sussex Wildlife Trust all included discussion of approach. The sampling approach was not objected to by any of the parties during this engagement (see Section 22.3 of Chapter 22: Terrestrial ecology and nature conservation, Volume 2 of the ES [APP-063]). Appendix 22.19: Hazel dormouse report 2023 – Revision A, Volume 4 of the ES [PEPD-030] submitted at Pre-Examination Procedural Deadline A provides additional survey for hazel dormouse from locations associated with the change in proposed DCO Order Limits made between the first Statutory Consultation Exercise (July to September 2021) Section 42 DCO Application submission in August 2023. No hazel dormice activity was recorded in the period May to November 2023 in the survey areas, and therefore, no change to the assessment, outcomes and conclusions provided within Section 22.9 of Chapter 22: Terrestrial ecology and nature conservation, Volume 2 of the ES [APP-063] are required. Locations of hazel dormouse survey sites evolved to reflect the proposed DCO Order Limits at each stage of the design evolution up to the final proposed DCO Order Limits at DCO Application submission (August 2023). At each of these locations, hazel dormouse surveys were carried out following the nest tube survey methodology described within the Dormouse Conservation Handbook, Second Edition, other than in 2020 as surveys in this year commenced later in the year due to the start date of the project and COVID-19 pandemic causing disruptions in the early part of the survey season</p>

Ref	Deadline 4 submission	Applicant's comments
TE 1.11	<p>Protected Species - Bat Surveys The Applicant a) The ExA requests an update to the Terrestrial Ecology chapter of the Environmental Statement [APP-063] to include the information from the document submitted into the examination at the PEPD relating to bat activities, [PEPD-029] Environmental Statement Volume 4, Appendix 22.18: Passive and active bat activity report 2023 Date: January 2024 Revision A. b) State if the information this report provides changes any of the conclusions in the Terrestrial Ecology chapter of the Environmental</p> <p>Chapter 22: Terrestrial ecology and nature conservation, Volume 2 of the Environmental Statement (ES) [APP-063] will be updated for submission at a future Examination Deadline. The results of the bat surveys from 2023 outlined in Appendix 22.18: Passive and active bat activity report 2023, Volume 4 of the ES [PEPD-029] do not alter the outcome of the assessment and the conclusions in Chapter 22: Terrestrial ecology and nature conservation, Volume 2 of the ES [APP-063]. West Sussex is known to support a wide variety and good numbers of bats. The data from the bat surveys demonstrate that all suitable habitat within the proposed DCO Order Limits will be used by bats. This has fed into the application of the mitigation hierarchy including avoiding suitable habitat where possible, minimising losses (such as use of trenchless crossings and notching of hedgerow (see commitment C-115 in the Commitments Register [REP1-015])), mitigation (such as temporarily filling gaps prior to reinstatement (see commitment C-291 (secured through the Outline Code of Construction Practice [PEPD-033] (updated at Deadline 3) via Requirement 22 of the Draft Development Consent Order [REP3-004] (updated at Deadline 3)) in the Commitments Register [REP3-049] (updated at Deadline 3)) and compensation (mainly in the form of habitat creation to be delivered through the process outlined in Appendix 22.15: Biodiversity Net Gain Information, Volume 4 of the ES [REP3-019] (updated at Deadline 3)) secured through Requirement 14 of the Draft Development Consent Order [REP3-004] (updated at Deadline 3)). It is the Applicant's view that bats will continue to use the landscape in vicinity of the onshore cable installation works. In</p>	<p>The SDNPA consider that the comments made during ISH2 and in our response to ExA Written Questions at Deadline 3 still stand [REP3-071]. It should be noted that a 14m notched hedgerow (as explained by the Applicant in their response) becomes in ecological terms a 40m-wide gappy hedgerow where previously there were no gaps (Graphic A3 Outline LEMP REP3-037). The effect of repeated gaps in a previously continuous (and in many cases substantially wide and high) hedgerow or treelines for bats, particularly light sensitive species such as long-eared and Myotis bats that are typically averse to crossing open habitat, has not been assessed. Yet the applicant has stated that gaps of more than 10m may prevent bats using hedgerows and treelines. The measures proposed to mitigate this (plugging gaps with inert material such as straw bales) have not been evidenced as successful for the species potentially affected.</p> <p>The Applicant notes that the notching of hedgerows is proposed to minimise habitat loss, with the more typical solution for linear projects to remove between 10 and 40m of hedgerow at each crossing dependent on the specification of the infrastructure. Where cables and haul road cross a feature, it is accurate to outline that this temporarily creates a 'gappy hedgerow', however the individual gaps would mainly be between 2m and 6m wide and could be crossed by bats. Although it is noted that not all individual bats would make the crossings.</p> <p>To increase the rate of crossing it is proposed to plug gaps temporarily with inert materials (see commitment C-291 in Commitments Register [REP4-057]) until reinstatement begins. This method has been used on a series of large linear schemes known as Anglian Water's Strategic Pipeline Alliance (see Anglian Water's Strategic Pipeline Alliance (2022)) (waterprojectsonline.com)). It is also proposed by Norwich County Council for the Norwich Western Link (Norwich Western Link - ES Chapter 11: Bats Appendix 6a: Temporary Flightlines (oc2.uk)).</p> <p>Slack (2022) undertook monitoring of the effectiveness of using temporary heras type fencing draped with camouflage net for the Anglian Water project referenced above and demonstrated that it was effective in increasing the levels of bats passing across gaps of up to 33m (see BritishIslandsBats VolThree 2022.pdf).</p>

Ref	Deadline 4 submission	Applicant's comments
	<p>Statement [APP-063]</p> <p>most instances the gaps created in hedgerows, tree lines and woodland will be six metres or less in width (e.g. a 14m notched hedgerow is up to four 2m wide trenches for the cables and one 6m gap created for the haul road with sections of hedgerow in between them). The Joint Nature Conservation Committee's (JNCC) 'Habitat management for bats: a guide for land managers, landowners and their advisors' (2001) outlines that (in point 1 on page 12) "...even gaps as small as 10m may prevent bats using hedgerows and tree lines'. Similarly, the Bat Conservation Trust in their guidance 'Landscape and urban design for bats and biodiversity' (Gunnell, Grant and Williams, 2012) recommend avoiding the opening of gaps greater than 10m in extent. Pinaud et al. (2017) modelled landscape connectivity for greater horseshoe bats and recommend that gaps are kept to less than 38m. To mitigate any hesitancy to cross gaps commitment C -291 (in the Commitments Register [REP3 -049] (updated at Deadline 3) secured through the Outline Code of Construction Practice [REP3 -025] (updated at Deadline 3) via Requirement 22 of the Draft Development Consent Order [REP3 -004] (updated at Deadline 3)) has been put forward to ensure that a suitable material is in place to maintain a linear structure overnight (such as straw bales, willow hurdles or dead hedging). It is also necessary to consider that installation of the onshore cable ducts will progress at approximately 150m per day ensuring that activity will pass through individual locations quickly. Although the haul road in each section will be being used for a longer period, its use would largely be at times when bats are roosting (i.e. during the daytime). At the onshore substation</p>	

Ref	Deadline 4 submission	Applicant's comments
	<p>site at Oakendene, the maintenance of corridors of vegetation, including advanced planting (see the Outline Landscape and Ecology Management Plan [REP3 -037] (updated at Deadline 3) secured via Requirement 12 of the Draft Development Consent Order [REP2-002] (updated at Deadline 3)), will ensure that bats will be able to remain in the area. Although the construction of the onshore substation at Oakendene will result in a short term negative effect on bats, the habitats to be created prior to, during and after the completion of the onshore substation will be beneficial to bats in the medium to long term. As stated in Chapter 22: Terrestrial ecology and nature conservation, Volume 2 of the ES [APP-063] no significant effects on bats are expected</p>	
2.3.19	<p>Appendix D – SDNPA comments on other Deadline 3 Submissions</p> <p><u>1 Introduction</u></p> <p>1.1 This section provides the SDNPAs comments on the following submissions made by the Applicant at Deadline 3:</p> <ul style="list-style-type: none"> • Outline Code of Construction Practice [REP3-025] • Outline Soils Management Plan [REP3-027] • Outline Construction Traffic Management Plan [REP3-030] • Outline Onshore Written Scheme of Investigation [REP3-035] • Outline Landscape and Ecological Management Plan [REP3-037] <p>Outline Noise and Vibration Plan [REP3-053]</p>	Noted, please see the Applicant's response below.
2.3.20	<p><u>2 Outline Code of Construction Practice</u></p> <p>2.1 The SDNPA welcomes the inclusion of the employment of an Agricultural Liaison Officer (ALO) and requests that their remit is broadened to ensure it is clear that it applies to all landowners affected by the proposed development. It is requested that the OCoCP also secures the commitment to work closely with the SDNPA, for which the Rangers working in the area have a wealth of information and knowledge that will be invaluable to the ALO. The importance of this is reflected in one of our S106 Agreement requests to enable a monitoring officer to be in post within the SDNP to (in part) facilitate and support this role.</p>	<p>The Agricultural Liaison Officer (ALO) (now Agricultural Liaison and Land Officer (ALLO)) role will include liaison with all affected landowners as per Section 2.6 of the Outline Code of Construction Practice [REP4-043] (updated at Deadline 5). The ALLO role is specifically designed to focus on land managers and the land uses applicable to the land involved and therefore it is not expected that South Downs National Park Authority (SDNPA) would be part of the engagement process set out at Section 2.6 of the Outline Code of Construction Practice [REP4-043] unless the land use involves South Downs National Park Authority projects or schemes. However, the Applicant will continue to engage with the South Downs National Park Authority and knowledge sharing during detailed design and discharge of DCO Requirements.</p>

Ref	Deadline 4 submission	Applicant's comments
2.3.21	<p>2.2 The provision of the list of inclusions within each compound is welcomed, however it is not clear whether these are the scenarios that were used to assess the effects of the compounds in the National Park, within the respective Environmental Statement chapters. Mitigation for those compounds within the SDNP or its setting (such as Washington) will need to be specific to the items/activities within them and the effects such activities will have on the Purposes and Special Qualities</p>	<p>The Applicant has provided a draft s106 agreement to South Downs National Park Authority for consideration.</p> <p>The list included provides further detail within the overall Rochdale Envelope (Advice Note Nine: Rochdale Envelope (Planning Inspectorate, 2018)) of the assessment used in the Environmental Statement (ES). As described in 18.4.15 of Chapter 18: Landscape and visual impact, Volume 2 of the ES [APP-059] (updated at Deadline 5) the batching plant provides the maximum height which is assumed to be up to 20m and the Zone of Theoretical Visibility has been based on this.</p> <p>There is no temporary construction compound of the kind described within the South Downs National Park Authority comment, only trenchless crossing compounds. The temporary construction compound at Washington is well screened from the A283, which forms the northern boundary of the National Park.</p>
2.3.22	<p>2.3 Whilst the inclusion of consolidated vegetation retention plans at Appendix B is welcomed, there remain a number of discrepancies contained within the plans. The SDNPA are aware that WSCC are providing comprehensive details of these anomalies and how they should be resolved. The SDNPA support these recommendations, in particular, provision of a more accurate and realistic assessment of what is to be removed, temporarily or permanently lost</p>	<p>Updates to Appendix B: Vegetation Retention and Removal Plans in the Outline Code of Construction Practice [REP4-043] (updated to a stand alone document, the Outline Vegetation Retention and Removal Plan (Document Reference: 8.87) at Deadline 5) were provided at Deadline 4 [REP4-043] to seek consistency between these, the Appendix 22.16: Arboricultural Impact Assessment, Volume 4 of the Environmental Statement (ES) [REP4-037] and the 8.61 Technical Note Construction Access Update Assessment Summary [REP3-055]. As part of the Examining Authority's Further Written Questions and requests for information [PD-012] received at Deadline 4, the Examining Authority requested that the Applicant provide a consolidated (as far as possible) 'Vegetation Retention and Loss Plan' at Deadline 5 as a stand alone document. This has been provided by the Applicant in the Outline Vegetation Retention and Removal Plan (Document reference: 8.87) at Deadline 5 and includes information on important and potentially important hedgerows and tree preservation orders and where permanent vegetation losses are to occur. Tables showing extents of vegetation losses are provided to aid understanding.</p> <p>The Applicant assumes that the "<i>provision of a more accurate and realistic assessment</i>" refers to identifying locations within individual hedgerows etc. where losses will occur. This is not possible as the Proposed Development is designed within a Rochdale Envelope (Advice Note Nine: Rochdale Envelope (Planning Inspectorate, 2018)), which in part allows for micro-siting to, for example, route cable trenches through gaps in defunct hedgerows or avoid standard trees. Currently the assessment in Chapter 22: Terrestrial ecology and nature conservation, Volume 2 of the ES [REP4-022] is based on a realistic worst case (i.e. 6m of loss from a defunct hedgerow assumes that the loss will actually be 6m of hedgerow vegetation with no overlap with any gaps). It is noted that all permanent losses of vegetation are at the onshore</p>

Ref	Deadline 4 submission	Applicant's comments
2.3.23	2.4 It is critical that within the SDNP, the CoCP should be actively seeking to avoid hedgerow and treeline removal in the first instance and a stronger commitment to this, through alternative measures (i.e. avoidance of the feature entirely, or coppicing where unavoidable) should be applied.	<p>substation and grid connection point at the existing National Grid Bolney substation. All habitat along the onshore cable corridor will be reinstated, other than at inspection hatches etc. (which would be located within fields).</p> <p>The Applicant has set out the commitment to apply the mitigation hierarchy during detailed design in commitment C-292 in the Outline Code of Construction Practice [REP4-043]. This applies in relation to crossings key habitats and landscape features including hedgerows and treelines as well as in consideration of whether vegetation management such as lopping or coppicing (which in this instance is a reduction in height to 0.9m) at accesses could be avoided or reduced. The Applicant has provided specific commitment in paragraph 2.2.5 and 2.2.6 of the Outline Code of Construction Practice [REP4-043] at Deadline 4 in this regard to the South Downs National Park and its Special Qualities, seeking to further the purpose through conserving and enhancing with acknowledgement that further detailed design will continue to apply these principles through the mitigation hierarchy. This information will be provided to the South Downs National Park Authority within the stage specific CoCPs pursuant to Requirement 22 of the Draft Development Consent Order [REP4-004].</p> <p>The Applicant has also provided a singular document including how it has sought to further the purposes of the South Downs National Park in Deadline 4 Submission – 8.25.5 Applicant's Post Hearing Submission – Issue Specific Hearing 2 Further information on South Downs National Park [REP4-063].</p>
2.3.24	2.5 In respect of coppicing for visibility splays within the SDNP, it is noted that these have in most instances not been factored into the ecological effects associated with the development as they are considered to be subject current management regimes. It is likely that the proposed development will lead to a more severe management regime, which would have greater residual impact on the National Park's functions (landscape and Page 20 of 23 ecology in particular). The CoCP should recognise this and provide more detail of the management of the visibility splays and the extent to which they will be coppiced.	<p>Coppicing in visibility splays is described in the Outline Code of Construction Practice [REP4-043]. It should be noted that this is used to describe reducing a hedgerow in height to 0.9m, as opposed to cutting it at base.</p> <p>Within visibility splays, vegetation management has been assessed by the Applicant including transport, ecology, landscape and visual and arboriculture. In these instances, it is vegetation management that is in line with what is typically delivered across the highway network to prevent encroachment of the carriageway and to maintain visibility. Most access points will be used during a peak period within any given section, and not for the duration of the construction phase. Given the above, it is unlikely that vegetation management, other than an occasional trim back, would be required following initial management. Vegetation management such as coppicing will be detailed within stage specific Vegetation Retention and Removal Plans. The Outline Code of Construction Practice [REP4-043] provides more information on management, monitoring and the process of remedial action. Following completion of the works vegetation will be permitted to grow back naturally at the specific location.</p>

Ref	Deadline 4 submission	Applicant's comments
2.3.25	2.6 The reference to the SDNPA's Dark Night Skies Technical Advice Note is welcomed, however a clearer commitment to the measures that will be implemented in the SDNP should be included.	The Applicant has committed to the implementation of the content of the South Downs National Park Dark Skies Technical Advice Note (South Downs National Park Authority, 2021) TAN insofar as it relates to construction lighting, this is a consistent approach to the other listed lighting design guidance notes included in the Outline Code of Construction Practice [REP4-043] in Section 4.5, the details of which will be provided in the stage specific Codes of Construction Practice pursuant to Requirement 22 of the Draft Development Consent Order [REP4-004] .
2.3.26	2.7 Please note, the concern raised in our response at Deadline 3 [REP3-071] still stands in respect of the impact of introducing 'shoulder hours'. Further consideration and explicit measures/exemptions should be provided to how these are implemented within the SDNP.	The reference to information contained in [REP3-071] is noted but it is not apparent which response is being referred to. However, the Applicant can clarify that the introduction of shoulder hours has reduced the level of permitted activity during these times compared to those proposed originally in the DCO Application. It is a betterment and additional level of restriction on the activity within those hours is already accounted for.
2.3.27	<p>3 Outline Soils Management Plan</p> <p>3.1 The SDNPA welcome the additional information regarding stockpiling methods, stockpile heights and measures to avoid soil mixing. The additional information regarding decompaction is also acknowledged. There still remains a number of outstanding matters and therefore the comments made in our Written Representation are still relevant [REP1-052].</p>	The Applicant welcomes the South Downs National Park Authority's position that the proposed soil handling and storage measures have been clarified. Please see the Applicant's responses to references 2.3.28 to 2.3.30 below in regard to the further clarifications requested.
2.3.28	3.2 It is noted that all land not yet surveyed had been classified as Grade 3 (BMV), but the estimate of area in the DCO Area is 23% Grade 2 and 35% Grade 3 (section 3.1.4 of REP3-027). Given that in the survey already undertaken, the percentage of Grade 2 land is not insubstantial, this broad classification of all soil as Grade 3 significantly plays down the potentially higher graded soil's importance.	The assessment in Chapter 20: Soils and agriculture, Volume 2 of the Environmental Statement (ES) [APP-061] , assumes that all land with a provisional ALC grade of Grade 3, that has not had agricultural land classification (ALC) survey to date, is Subgrade 3a and meets the definition of best and most versatile (BMV) land, rather than Subgrade 3b which is not BMV land. It is the Applicant's intention that agricultural land which may be affected by the Proposed Development and which has not been included in the recent ALC survey (Appendix 20.1: Detailed Agricultural Land Classification Report, Volume 4 of the ES [APP-175]) will be surveyed to confirm its current ALC status during pre-construction, to inform the stage-specific Soils Management Plans (SMPs) in accordance with the Outline Soils Management Plan [REP3-027] . All identified soil types and ALC grades will have soil handling and storage measures detailed in the stage-specific Soils Management Plans (SMPs) in accordance with the Outline Soils Management Plan [REP3-027] .
2.3.29	3.3 The SDNPA note additional surveying will take place and will inform micro-siting so that 'temporary or permanent development on the best quality agricultural land is avoided'. The level of flexibility of this approach given the physical limitations of the DCO area and the need for regular joint bays leaves us to question how this would be achieved in practice.	The South Downs National Park Authority is correct to state that, given the physical limitations of the proposed DCO Order Limits (i.e. the linear nature of the onshore cable corridor), there will be limited opportunity for micro-siting. However, the Applicant is committed to reviewing agricultural land classification (ALC) survey data prior to final joint bay location (commitment C-259 of the Commitments Register [REP4-057] provided at Deadline 1 submission and is secured through the Outline Soils Management Plan [REP3-027] , Requirement 22 of the Draft Development Consent Order [REP4-004]). To support this, the Outline Soils Management Plan [REP3-

Ref	Deadline 4 submission	Applicant's comments
2.3.30	<p>3.4 Initial details have been provided about the soil tracking system to monitor the location of soil stored away from the original source, which is then to be returned. The SDNPA would expect further clarification on:</p> <ul style="list-style-type: none"> How far soil is being taken from the original excavation; Why it could not be stored more locally to reduce lorry movements and the amount of handling the soils need (as both will impact on quality); and <p>How the tracking will work in practice.</p>	<p>027] has been updated to state that review of ALC reports will be undertaken on a staged basis to inform detailed design once full ALC data is available for the relevant onshore cable route section, to minimise effects on the best agricultural land by placing joint bays in land with the lowest available ALC grade where practicable, subject to achieving the required joint bay frequency along the onshore cable route.</p> <p>Soils that are to be reinstated at their original location will be stored local to the point of excavation within the Rampion 2 onshore cable construction corridor working area wherever possible. Separate topsoil and subsoil stockpiles are allowed for within the 40m construction working width for the onshore cable corridor and areas for soil storage outside floodplains are also included in proposed DCO Order Limits. This will minimise vehicle movements and enable reinstatement of soils at the earliest opportunity. Minimising vehicle trips is a key objective stated in the Outline Construction Traffic Management Plan [REP4-045] including in relation to soil handling and storage.</p> <p>Stage specific Soils Management Plans will be developed (in accordance with the Outline Soils Management Plan [REP3-027]) in conjunction with stage a specific Soils Resource Plan. The stage specific Soils Resource Plan will be produced during pre-construction to detail the type, area, volume of soils to be stripped, haul routes and stockpile arrangements. The provision of a stage specific Soils Management Plan and Soils Resources Plan is secured via Requirement 22 of the Draft Development Consent Order [REP4-004].</p> <p>The detailed system for tracking soils from excavation to stockpile and to subsequent reinstatement is to be developed by the appointed contractor during pre-construction. The system will meet the requirements of the Materials Management Plan (MMP), as approved by a registered Qualified Person for the construction phase, in identifying where soils have been excavated from, where they are being stored, and where they are to be subsequently placed, which in most instances will be at their original location.</p>
2.3.31	<p><u>4 Outline Construction Traffic Management Plan</u></p> <p>4.1 The SDNPA's comments on this document relate specifically to Appendix D: Technical Note – Construction Accesses A-26, A-28, A-61 and A-64 Traffic Management Strategies and focus on accesses A-26 and A-28 at Michelgrove Lane and Tolmare Farm.</p>	<p>The Applicant can confirm that an updated version of the Construction Accesses A-26, A-28, A-61 and A-64 Traffic Management Strategies was included within Appendix D of the Outline Construction Traffic Management Plan [REP4-045]. As part of this update, it was confirmed that heavy goods vehicles (HGVs) will be required to turn right out of access A-26 and cable-drum HGVs will be required to turn right out of access A-28. These controls will be contained within stage specific construction traffic management plans, developed in accordance with Outline Construction Traffic Management Plan [REP4-045] as per Requirement 24 of the Draft Development Consent Order [REP4-004].</p>
2.3.32	<p>4.2 The SDNPA is concerned that the tracking provided for HGVs at A-26 demonstrates it is not possible to turn left from Michelgrove Lane without occupying the southbound lane. Further consideration should be given to whether additional management controls are required.</p>	
2.3.33	<p>4.3 It is also noted that the cable-drum HGV will not be able to complete a left-turn movement from A-28. We are concerned that further works will be required to enable this movement. Clarification should be provided as to what these works will entail</p>	

Ref	Deadline 4 submission	Applicant's comments
2.3.34	<p>4.4 The proposed construction route to serve the majority of the construction traffic within the SDNP would comprise an approximately 10km route through what is largely open downland. It is not clear whether the effects of this have been fully assessed in respect of the National Park Purposes and the Special Qualities. As this route is, for HGV movements, largely a one-way route, this has the potential to have a sustained impact across the construction period. Furthermore, as demonstrated from the figure below, there is a noticeable increase in elevation across the route. This is similar to the gradient of the Lickey Incline in Birmingham, which is the steepest gradient on a British standard gauge railway. Further clarity that additional works will not be required to enable HGVs to manoeuvre over the 'bump' at the c.1.24 mile point is requested (see fig. 01 below).</p>	<p>This section of the onshore cable route will be subject to further topographical surveys and detailed design, to be undertaken by the Engineering, Procurement, Construction and Installation (EPCI) Contractor. The Applicant is aware that there are sections where the vertical topography is notably steeper. However, the gradient identified by the South Downs National Park Authority (the Lickey Incline is 2.65%) is half that commonly accepted for highway design (Manual for Streets suggests a maximum of 5 or 6%).</p> <p>The 'bump' at 1.24 miles (assumed to be 1.24 miles along the haul road from Michelgrove Lane) appears to be over the ridge north of Blackpatch Hill. The Applicant's data does not show such a pronounced bump as the South Downs National Park Authority's software. Safe working gradients of the proposed heavy goods vehicles (HGVs) will depend on the manufacturer's specification and will require to be considered during the detailed design phase by the Principal Contractor.</p>
<p>Fig. 01 Elevation change along Michelgrove Lane and Tolmare Farm construction route</p>		
2.3.35	<p>4.5 The SDNPA are aware that WSCC are also providing detailed comments, which we support with reference to the above-mentioned accesses.</p>	<p>The Applicant has provided detailed comments to West Sussex County Council's Deadline 4 response [REP4-086] with respect to the Outline Construction Traffic Management Plan [REP4-045] in Table 2-4.</p>
2.3.36	<p><u>5 Outline Onshore Written Scheme of Investigation</u></p> <p>5.1 The SDNPA welcomes the revisions to the Onshore WSI. We have liaised with WSCC to provide a joint response to the Onshore WSI, which is included with the WSCC Deadline 4 submission. These comments are provided with the caveat that whilst the WSI itself is clear and commits to appropriate further steps in respect of public outreach in particular, the applicant continues to rely on design and engineering solutions that they simply don't have enough information to demonstrate are possible.</p>	<p>The Applicant notes the South Downs National Park Authority welcoming of the revisions to the Onshore Written Scheme of Investigation.</p> <p>Please see the explanation and justification of the approach to surveys set out within the Applicant's Response to Action Point 59 within Appendix B of the Deadline 4 Submission – 8.70 Applicant's Response to Action Points Arising from Issue Specific Hearing 2 and Compulsory Acquisition Hearing 1 [REP4-074].</p> <p>Following comments made by West Sussex County Council (WSCC) at the Issue Specific Hearing 2 and in response to WSCC's Deadline 4 submission [REP4-086], the Applicant has amended the wording of commitment C-225 (Commitments Register [REP4-057]), which was agreed with WSCC via email communication in July 2024. Commitment C-225 has been updated in the Commitments Register [REP4-057] (updated at Deadline 5), Outline Code of Construction Practice [REP4-043] (updated at Deadline 5) and</p>

Ref	Deadline 4 submission	Applicant's comments
2.3.37	<p>5.2 It is the SDNPA's opinion that the key test of identifying the asset's significance before attributing a scheme of mitigation – starting with avoidance – has not been achieved. This should be the starting point for determining any mitigation. Given the nature of the potential archaeology in this particular location, and as discussed in our previous representations [REP1-052 and REP3-071] and WSCC's representations [REP3-073], we are not convinced that avoidance through micro-siting will be achievable. We therefore maintain that field-evaluation is required prior to determination.</p>	<p>Outline Onshore Written Scheme of Investigation [REP3-035] (updated at Deadline 5).</p>
2.3.38	<p><u>6 Outline Landscape and Ecological Management Plan</u></p> <p>6.1 The OLEMP remains a light-touch document that is missing how habitats are going to achieve the mitigation requirements. This could be resolved through the production of a separate biodiversity management plan. If not, for the SDNP we would expect a separate section within the OLEMP that specifically sets out the protected species information, with a clear strategy for how mitigation measures will be managed and monitored.</p>	<p>The Outline Landscape and Ecology Management Plan [REP4-043] was updated at Deadline 4 with further information. This included further detail on monitoring and remedial actions.</p>
2.3.39	<p>6.2 As stated at ISH2, the OLEMP does not demonstrate how specific interventions along with their maintenance and management will be contributing to the National Park Purposes and Special Qualities. No measures have been identified as being specifically to support these. Within Section 4 of the OLEMP, we would welcome a section that provided further clarification of the additional steps that will be taken within the SDNP to demonstrate the commitment to seek to further SDNP Purposes. Such measures could include:</p> <ul style="list-style-type: none"> • Reinstatement of habitat to the same habitat type and to an improved condition (where this will not demonstrably prevent the landowner from continuing usual activities); • Opportunities identified for habitat creation secured alongside planting reinstatement works at temporary compounds and along the cable corridor where hedgerows, woodland, tree belts and field margins are affected; • Employment of traditional techniques such as hedge-laying to retain local, traditional skills; • Commitment to sourcing peat-free plants and local provenance seed mixes and plant species for replanting; • Commitment to providing landscape plans for hedgerow and treeline reinstatement (at present the OLEMP only suggests these may be produced); • Further detail of the replacement of woodland within the SDNP with scrub e.g. clearer commitment to what steps will be taken to ensure that the key landscape and ecological features characteristic of those discrete areas are recreated as closely as possible. This should include natural regeneration where appropriate; • Using Dormice as an indicator of restoration and enhancement success, using habitat enhancement in locations such as Kitpease Copse / Olivers Copse to encourage movement and dispersal; • Avoidance of chemical use; • Planting at appropriate times of years to avoid the need for unnecessary watering and subsequent plant failures; • Details of how watering over such a vast area will be undertaken and delivered; • Clear demonstration of options to achieve multiple benefits through the interventions; <p>Clear links to the Soil Management Plan.</p>	<p>The Applicant provided a new section 1.3 of the Outline Landscape and Ecology Management Plan [REP4-047] at Deadline 4 with regard to the South Downs National Park and its Special Qualities, on how the Applicant has sought to further the purpose through conserving and enhancing with acknowledgement that further detailed design will continue to apply these principles through the mitigation hierarchy. This includes commitment to delivering localised habitat enhancements in agreement with landowners in paragraph 4.1.2.</p> <p>This information will be provided to the South Downs National Park Authority within the stage specific LEMPs pursuant to Requirement 12 of the Draft Development Consent Order [REP4-004].</p> <p>With regards the individual points raised:</p> <ul style="list-style-type: none"> • The Outline Landscape and Ecology Management Plan [REP4-047] acknowledges that local enhancements would be sought and delivered (outside of the commitment to biodiversity net gain (BNG)) in agreement with landowners. It is noted that these would need to be applied to whole features (e.g. diversifying a hedgerow and managing it sympathetically is of recognisable value, whereas trying to initiate better management on a short section of reinstated hedgerow does not). The South Downs National Park and furtherance of its aims is referenced. • The Outline Landscape and Ecology Management Plan [REP4-047] acknowledges that local enhancements would be sought and delivered, with larger extents being delivered through the commitment to BNG. Again, it is acknowledged that this would require landowner agreement.

Ref	Deadline 4 submission	Applicant's comments
		<ul style="list-style-type: none"> • The use of traditional skills to manage habitats could apply to either localised enhancements or BNG. This would be detailed in either the Stage Specific Landscape and Ecology Management Plans (LEMPs) (secured via Requirements 12 and 13 of the Draft Development Consent Order [REP4-004], or through the stage specific Biodiversity Net Gain strategies (secured through Requirement 14 of the Draft Development Consent Order [REP4-004]). Use of these skills is however referenced in the Outline Landscape and Ecology Management Plan [REP4-047]. • Commitments to sourcing peat free plants and local provenance seeds would be detailed in the stage specific LEMP. However, it is noted that the vast majority of planting stock would be bare root and therefore by process would be peat free and seed source would be dependent on habitat type (e.g. if winter bird cover margins were being replaced the seed source is likely to be that which the landowner used initially). Seed sources and plants of local provenance are identified as preferable within the Outline Landscape and Ecology Management Plan [REP4-047]. • Wording of the Outline Landscape and Ecology Management Plan [REP4-047] has been updated to note that plans would be created for every tree line and hedgerow subject to temporary losses. • Methods to replace woodland loss with scrub, would be detailed in the stage specific LEMPs. Natural regeneration could be considered and this would be subject to approval by the South Downs National Park Authority via Requirements 12 and 13 of the Draft Development Consent Order [REP4-004]. Wording in the Outline Landscape and Ecology Management Plan [REP4-047] has been updated to allow for natural regeneration where appropriate. • A commitment to using dormouse to monitor the success of habitat restoration at Kitpease Copse is not logical at this stage as surveys show that they are likely absent or present at very low densities. Should pre-construction surveys show dormouse <i>Muscardinus avellanarius</i> to be present this measure would be introduced through European Protected Species licensing as a matter of course. • Chemical use for weed control would be avoided in favour of the use of mulches or weed mats to control weed growth. However, chemical use may be required should there be issues with non-native invasive species such as Japanese knotweed). Wording has been updated in the Outline Landscape and Ecology Management Plan [REP4-047] to reflect this position. • The Outline Landscape and Ecology Management Plan [REP4-047] describes planting times and approach to watering. <p>The Outline Soils Management Plan [REP3-027] and stage specific Soils Management Plan are referenced in the Outline Landscape and Ecology Management Plan [REP4-047].</p>

Ref	Deadline 4 submission	Applicant's comments
2.3.40	6.3 Further to the suggestions above, we would also like to make general comments in respect of the OLEMP.	Noted, the Applicant has no further comments on this matter at this time.
2.3.41	6.4 The SDNPA still have concerns regarding the assertion that reinstatement will be undertaken after 2 years. In many instances this may not be achievable, given the location of accesses, haul roads and construction compounds.	The Applicant refers to the wording of commitment C-103 (Commitments Register [REP4-057] updated at Deadline 5) that acknowledges that not all habitat will be restored within 2 years (see Outline Code of Construction Practice [REP4-043]). However, the Applicant is confident that the majority of habitat will be reinstated within 2 years.
2.3.42	6.5 SDNPA also request a commitment in the OLEMP to the production of a strategy or protocol that demonstrates how maintenance, management and monitoring will be reported to and submitted to the relevant Planning Authority. This links to our request for the provision of a monitoring fund as part of the S106 Agreement, to secure the necessary resource within the SDNPA to ensure robust monitoring can take place. This proved a vital part of the Rampion 1 construction process (and beyond into the monitoring of the completed works). We also support WSCC's request for a strategy for handover arrangements to an OFTO to be included in the OLEMP	Paragraphs 5.1.9 and 5.1.10 were added to the Outline Landscape and Ecology Management Plan [REP4-047] at Deadline 4 with respect to the strategy for handover arrangement to the OFTO.
2.3.43	7.1 It is not clear from the description of the Proposed Development in ES Chapter 4 [APP045] if the proposed noise barriers were taken into consideration in the assessment of landscape and visual effects, given that the ONVMP has been issued at Deadline 3. These interventions could contribute to a more significant adverse impact on visual effects for a prolonged period of time.	Noise barriers can take a variety of forms. Where noise barriers are required to screen receptors from works within temporary construction compounds (either proprietary acoustic barriers or site hoarding), these have been assessed within Appendix 18.4: Visual assessment, Volume 4 of the Environmental Statement [APP-170] updated at Deadline 5. Moveable acoustic screening (acoustic curtains attached to Heras-style wire fencing) will be deployed to screen plant that is present for much shorter durations, such as generation or compressor plant within trenchless crossing compounds. Due to the temporary and mobile nature of these worksites, along with the agile nature of the barrier deployment in cases where adverse noise levels are experienced that were not predicted, these items are excluded from the Landscape and Visual Impact Assessment (LVIA) as they are short term, temporary and mobile although temporary screen fencing and hoarding around the perimeter of construction sites has been included.
2.3.44	7.2 The ES Chapter 21 section 21.9.52 [APP-062] , in relation to 'Temporary noise effects from onshore cable installation (trenched)', states that 'For non-residential receptors, the magnitude of change is defined as Low and the sensitivity of the receptors are classified as High. With reference to Table 21-24, this is reflective of a Moderate / Minor adverse significance and Potentially Significant in EIA terms. However, due to works being undertaken for a maximum of two days in the vicinity of the receptors, which is significantly below the temporal criteria reflective of a Low magnitude of change, the effect is determined to be of Minor adverse significance and Not Significant in EIA terms.' The 'two days' of noise cannot be regarded as an isolated experience in this way; the construction work will be a continuous process, with the noise simply shifting along the construction route. The haul road itself will remain in place even after the construction of the trenches in a specific location has concluded. Therefore, noise and vibration (associated with HGV movements) effects will be felt for the duration of the construction period – 4 years.	The trenching works are predicted to progress at an average speed of 35m per day. Although this process is continuous, the zone of influence for noise will move along the line of onshore cable route with the trenching equipment, such that the areas affected by noise would be for a duration less than the temporal factor within British Standard (BS) 5228-1 (British Standards Institute (BSI), 2014a) for significant impact. The entirety of the South Downs National Park will not be affected by this noise as it is very localised. The Applicant maintains that 'Not significant' is the correct outcome of the assessment of noise from trenching works. Regarding the Haul Route, paragraph 21.9.59 of Chapter 21: Noise and vibration, Volume 2 of the Environmental Statement [PEPD-018] outlines that noise from vehicles using Haul routes and accesses would give rise to sound levels of 61dB LAeq,1h at a distance of 5m which is below the threshold of significant in BS 5228-1 (BSI, 2014a).

Ref	Deadline 4 submission	Applicant's comments
2.3.45	<p>7.3 The management plan sets out the need to identify the 'nearest noise sensitive receptors' (section 3.2.3). Given that the SDNP's Special Qualities include 'Tranquil and unspoilt places', the SDNPA would suggest that all parts of the SDNP are 'noise sensitive receptors'. This assertion is supported in the ES Chapter on Noise and Vibration at table 21-22 which identifies the SDNP as a receptor of high sensitivity. [APP-062]. It is therefore difficult to see how a conclusion can be reached that there is no significant effect given the receptor is so vast.</p>	<p>The Applicant recognises that the South Downs National Park Special Qualities include 'Tranquil and unspoilt' places. The Outline Noise and Vibration Management Plan [REP3-054] would apply to the South Downs National Park, as a recognised sensitive receptor. Nevertheless, Chapter 21: Noise and vibration, Volume 2 of the Environmental Statement [PEPD-018] and the Outline Noise and Vibration Management Plan [REP3-054] has had regard to <i>BS 5228-1:2009 + A1:2014 Code of practice for noise and vibration control on construction and open sites. Part 1: Noise</i> (British Standards Institute, 2014), which states "...subject to lower cut-off values of 65 dB, 55 dB and 45 dB $L_{Aeq, \tau}$ from site noise alone, for the daytime, evening and night-time periods, respectively...For public open space, the impact might be deemed to cause significant effects if the total noise exceeds the ambient noise ($L_{Aeq, \tau}$) by 5 dB or more for a period of one month or more. However, the extent of the area impacted relative to the total available area also needs to be taken into account in determining whether the impact causes a significant effect."</p> <p>Therefore, although the immediate area around works may give rise to adverse effect, when taken over a month period (as per the criteria in <i>British Standard (BS) 5228-1:2009 + A1:2014 Code of practice for noise and vibration control on construction and open sites. Part 1: Noise</i> (British Standards Institute, 2014), and considering the overall area, relative to local effects, the consideration of 'no significant effect' is confirmed.</p>
2.3.46	<p>7.4 This statement highlights again that the effects on the Special Qualities of the SDNP have been under-assessed and underplayed. The kinetic experience for regular users on PROWs, has not been picked up in Environmental Statement chapters on Landscape and Visual impact or Noise chapter, nor in the mitigation proposed within the associated Management Plans</p>	<p>The Applicant notes that an update to the Deadline 4 Submission – 8.25.5 Applicant's Post Hearing Submission – Issue Specific Hearing 2 Appendix Further information on South Downs National Park Revision B [REP1-024] has been provided at Deadline 4.</p>
2.3.47	<p>7.5 Action points 7, 35, 36 and 61 apply to Noise and Vibration as well and highlight the points raised by the SDNPA in ISH2 in respect to the importance of consideration of the Special Qualities, in the SDNPAs written representation [REP1-052] sections 3.5 and 3.7, and the Local Impact Report [REP1-049] sections 6.18 to 6.20.</p>	<p>Chapter 18: Landscape and visual impact assessment, Volume 2 of the Environmental Statement (ES) [APP-059] includes sequential / kinetic assessment of the mainly visual experience likely to be experienced by people walking, horse-riding and cycling on public rights of way (PROWs). In particular, the South Downs Way includes a series of viewpoints and additional wire lines which illustrate the extent of visibility. Therefore, this aspect has been covered in the Chapter 18: landscape and visual impact assessment, Volume 2 of the Environmental Statement [APP-059] and within Appendix 18.4: Visual assessment, Volume 4 of the ES [APP-170]. The effects on users of PROWs has been considered by the Applicant in the assessment of noise. Users of the PROWs will quickly pass by any noise source, such that their exposure is transient.</p> <p>Chapter 21: Noise and vibration, Volume 2 of the ES [PEPD-018] assesses the impact of the Washington Temporary Construction Compound which is close to the boundary of the South Downs National Park and is expected to be in place for the duration of construction. This temporary construction compound is located next to the A283, where the tranquillity is relatively low as reflected on the South Downs National Park Tranquillity</p>

Ref	Deadline 4 submission	Applicant's comments
		<p data-bbox="1774 296 2807 394">Study (South Downs National Park Authority, 2017). The noise impact at this location is concluded to be not significant due to the low magnitude of impact, the temporary nature and the existing low tranquillity in this location.</p> <p data-bbox="1774 432 2807 772">Chapter 21: Noise and vibration, Volume 2 of the ES [PEPD-018] also assesses presence of the trenchless crossings, including those at Michelgrove (TC-12) and Sullington Hill (TC-15), are in areas of higher tranquillity near Public Rights of Way and Open Access Land at Sullington Hill and therefore high sensitivity in the assessment. This includes periods of continuous working while crossings are undertaken and it is acknowledged this will temporarily affect tranquillity in these locations. Chapter 21: Noise and vibration, Volume 2 of the ES [PEPD-018] concludes these are not significant effects when the short-term duration of such works is taken into account.</p> <p data-bbox="1774 810 2807 1050">Access routes associated with accesses A-26 and A-28 cross the areas of higher tranquillity too and are assigned high sensitivity for noise and vibration. While it is predicted that there will be some impact, the assessment does not identify significant effects at receptors on these routes when considered against the criteria in <i>British Standard (BS) 5228-1:2009 + A1:2014 Code of practice for noise and vibration control on construction and open sites. Part 1: Noise</i> (British Standards Institute, 2014).</p>

Table 2-4 Applicant's comments to West Sussex County Council's Deadline 4 submissions

Ref	Deadline 4 submission	Applicant's response
2.4.1	<p>1 Overview</p> <p>1.1 This document provides a response at Deadline 4 (3 June 2024) from West Sussex County Council (hereafter 'WSCC') on the following Deadline 3 submissions by Rampion Extension Development Limited (hereafter the 'Applicant') and following Issue Specific Hearing 2 (ISH 2) on 15 and 16 May 2024. These documents are:</p> <ul style="list-style-type: none"> • Updated Draft DCO (REP3-003); • Design and Access Statement (REP3-014); • Biodiversity Net Gain Information (REP3-019); • Traffic Generation Technical Note Assessment (REP3-022); • Outline Operational Drainage Plan (REP3-023); • Outline Code of Construction Practice (REP3-025); • Outline Construction Traffic Management Plan (REP3-030); • Outline Public Rights of Way Management Plan (REP3-034); • Outline Onshore Written Scheme of Investigation (REP3 - 035); • Outline Landscape and Ecology Management Plan (REP3 - 037); • Updated Commitments Register (REP3-049); • Outline Noise and Vibration Management Plan (REP3-054); • Technical Note Construction Access Update Assessment Summary (REP3-055); • Engagement with the Applicant on the proposed Section 106 Heads of Terms (REP3-066); and • Applicant's responses to the first set of ExAs Written Questions (REP3-051). 	Noted, the Applicant has no further comments at this stage.
2.4.2	<p>2 Post Hearing Submissions (ISH 2)</p> <p>2.1 Responses given by WSCC during ISH 2 have been incorporated into the responses on relevant outline documents given within this submission. Therefore, no separate post hearing submission have been produced.</p> <p>2.2 One action point arising from ISH 2 required a response by WSCC. The response to Action Point 60 (Day 2, Agenda Item 98 – Onshore Archaeology, EV5-018) is provided, together with comments on the Outline Onshore Written Scheme of Investigation (OOWSI) (REP3 - 035) within this response.</p>	
Response to submitted documentation by the Applicant at Deadline 3		
2.4.3	<p>3.1 WSCC has provided a response to a number of updated documents submitted by the Applicant at Deadline 3. Further commentary is given below.</p>	Noted, the Applicant has provided detailed responses to the commentary provide by West Sussex County Council below.
Updated Draft DCO (REP3-003)		
2.4.4	<p>3.2 Part 3, article 11 (Temporary Closure of Streets) – WSCC has previously questioned the inclusion of 'deemed consent' and the 28 day time period. It is now apparent in this article that</p>	The Applicant agrees that by virtue of Article 11(7) deemed consent only relates to roads not already identified in Schedule 3 as consent is not needed for the temporary closure of those roads.
2.4.5	<p>deemed consent will apply only to roads not already identified within Schedule 3 (Streets to be</p>	
2.4.6		

Ref	Deadline 4 submission	Applicant's response
2.4.7	<p>Temporarily Closed). At this stage, it would seem that the Applicant has already identified those locations where a temporary closure would be necessary.</p> <p>3.3 If further roads are identified within 5(b) and the deemed consent requirement in (7) enacted, this requires only that the street authority issues a decision within 28 days. A decision can be made within this time frame. It should be noted that in agreeing any additional temporary closure locations, there will still be processes that WSCC would need to apply through a Temporary Traffic Regulation Order (TTRO) to enact any agreed closure. The Applicant should note that an 8 week time frame would be required for a TTRO.</p> <p>3.4 Part 3, article 16 (Temporary Speed Limits) – This article should clearly state this refers to temporary rather than permanent speed limits.</p> <p>3.5 A Temporary Speed Limit would require a Temporary Traffic Regulation Order. Ordinarily a TTRO requires a 12 week period to enable WSCC to process the required Order. WSCC requests the 4 week notice period referred to in (2) must be increased to a minimum of 8 weeks.</p>	<p>The Applicant is pleased to note that the street authority will be able to make a decision in the 28 day timeframe identified.</p> <p>The Applicant does not agree that any further process will be required to effect any agreed closure as Article 11 provides statutory authority for the temporary closure such that the process of applying to the local traffic authority for a TTRO is not required.</p> <p>The Applicant has amended Article 16 in the Draft Development Consent Order [REP4-004] as updated at Deadline 5 to clarify that the speed limits are temporary.</p> <p>As with Article 11, the Applicant disagrees that a further procedure would be required. Article 16 of the Order grants statutory authority for the speed limit subject to the approval of the traffic authority and notification to the chief of police. As provided in Article 16(3), the speed limits are deemed imposed by an order under the 1984 Act (section 88).</p> <p>The Applicant notes that similar wording has been included in the Northampton Gateway Rail Freight Interchange Order 2019, save that this also specifies a number of locations where speed limits are to be imposed in a schedule to the Order in addition to providing a general power as included in the Draft Development Consent Order [REP4-004] for Rampion 2 (updated at Deadline 5).</p>
2.4.8	<p>3.6 Schedule 13 – Hedgerows - This requires amending to reflect changes within the Vegetation Retention Plans (VRP) shown within the Outline Code of Construction Practice (OCOCP). This is needed to ensure article 44 permits removal of the required hedgerows. In light of this, the Tree Preservation Order and Hedgerow Plan (PEPD-007) also requires amendment to reflect changes identified within the revised VRPs shown within the OCoCP.</p>	<p>The Applicant has provided an updated Schedule 13 within the Draft Development Consent Order [REP4-004] and Tree Preservation Order and Hedgerow Plan [REP4-003] at Deadline 5 which reflect the changes within the Outline Vegetation Retention and Removal Plan (Document Reference: 8.87) (submitted at Deadline 5).</p>
<p>Design and Access Statement (REP3-014)</p>		
2.4.9	<p>3.7 The changes presented by the Applicant are welcomed by WSCC, in particularly the clearer identification of 'principles' and greater certainty with regard to advance planting (the new phasing plan is also very much welcomed), noise mitigation and some additional (albeit limited) details of the architectural strategy. Some further commentary on this updated document is given below:</p> <ul style="list-style-type: none"> Regarding noise (Table 3-6), WSCC previously commented regarding reducing operational noise thresholds as close to background levels as possible remain relevant. Further, it is questionable whether the principles here should also reflect/elaborate upon noise mitigation and attenuation measures as set out at Table 2-1, L5. It is key that the principles set out the measures to be adopted to 'minimise noise' as far as practicable (i.e. not only to the threshold levels). Table 2-2, AS4 – ground levels. It is noted that no import or export of materials is expected, however, without clarification on what groundworks and change in levels is likely, there remains potential for significant localised changes to landscape and visual impacts. The extent and depth of attenuation basins (at 1.5m) coupled with the groundworks required, is likely to result in considerable volumes of material that will need to be placed elsewhere on site resulting in elevated areas above existing ground 	<p>The Applicant notes West Sussex County Council's welcoming of the amendments made by the Applicant to the Design and Access Statement [REP3-013] which include:</p> <ul style="list-style-type: none"> clearer identification of Design Principles; greater certainty with regard to advance planting; noise mitigation; and details of the architectural strategy. <p>The Applicant considers that the design minimises noise to as low as is practicable, that is, the predicted operational noise levels are below the Lowest Observed Adverse Effect Level (LOAEL). As the Applicant demonstrated in the Deadline 4 Submission – 8.77 Applicant's Response to Stakeholder's Replies to Examining Authority Written Questions Revision A [REP4-079] "There is no published evidence to support specifying a rating level below 35dB outside at night. A rating level of 35dB outside and below are equivalent in terms of protecting the amenity of occupier. Specification of a rating level below 35dB outside at night does not provide additional benefit to the occupier". This remains the Applicant's position.</p> <p>Design Principle AS5 has been updated in the Design and Access Statement [REP3-013] at Deadline 5 to reflect the use of metres Above Ordnance Datum (mAOD) in Requirement 8 within the Draft Development Consent Order [REP4-004]. Design Principle AS4 in the in the</p>

Ref	Deadline 4 submission	Applicant's response
	<p>levels. It has not been demonstrated how the LVIA has taken this into account or whether opportunities to utilise this material to maximise screening/noise attenuation have been considered.</p> <ul style="list-style-type: none"> AS5 – this does not use AoD heights as have been specified in the updated DCO Requirement. 3.3.6 – As previously noted, WSCC are not convinced that the photomontages of the buildings show the worst-case scenario, for example, lightning masts are excluded and the potential change in ground levels not accounted for. Regarding the updated Oakendene Substation Indicative Landscape Plan, the additional planting/updated planting provision is welcomed (e.g. at the access and to the south west corner). However, it is somewhat concerning that the native woodland planting belt along the east of the site (adjacent to Kent Street) seems to be narrower, which could potentially reduce its screening effect. Further along this boundary, the plan notes 'Retained and protected tree cover along Kent Street Lane', however, this seemingly conflicts with the latest VRPs in the OCoCP, which show this as a hedgerow 'cleared to 20m' – this is of concern given the screening effect of the mature existing boundary. 	<p>Design and Access Statement [REP3-013] confirms that the ground level used for the purposes of the environmental assessment and concept level design at this stage is based on a level that does not require material to be exported from or imported to the site. The LVIA has therefore been based on this principle. Consequently, ZTV's illustrated in the figures (Figures 18.2a-c and 18.3a-c) have been updated to reflect the mAOD for the onshore substation at Oakendene and the existing National Grid Bolney substation extension, and the LVIA has been reviewed to account for this adjustment. Updates have also been made in the Design and Access Statement [REP3-013] and the Indicative Landscape Plan (Appendix D of the Design and Access Statement [REP3-013]) for Oakendene to reflect that temporary vegetation losses on Kent Street associated with access to the onshore cable corridor and the junction with the A272 which will be reinstated.</p> <p>The Applicant notes that the lightning masts are now shown on all of the photomontages as updated for Deadline 4.</p> <p>All of the visualisations have been prepared to comply with Landscape Institute Technical Guidance Note on Visual Representation of Development Proposals (2019) as noted in Appendix 18.1: Landscape and visual impact assessment methodology, Volume 4 of the Environmental Statement [APP-167]. The mAOD for the onshore substation at Oakendene and the existing National Grid Bolney substation extension are included within the 3D computer model of the onshore substations and DTM which is overlain with the baseline photographs. Landscape Institute's guidance advises that visualisations such as photomontages are aimed at providing a realistic impression of the Proposed Development and the photomontages accord with that guidance.</p>
Biodiversity Net Gain Information Rev. B (REP3-019)		
2.4.10	<p>3.8 The adoption of the statutory biodiversity metric is welcomed. The new Section 4.1.7 is also helpful. However, it states that 'habitats being temporarily lost to development will not be reinstated for up to 2 years.' WSCC suggest that this is somewhat misleading as some areas such as temporary construction compounds, cable joint bays, some haul roads, some construction access roads and the landfall will not be reinstated until the end of the full construction period, as stated in Commitment C-103.</p>	<p>The Applicant notes West Sussex County Council's welcoming of the adoption of the Statutory Biodiversity Metric.</p> <p>The Applicant notes that Appendix 22.15: Biodiversity Net Gain Information, Volume 4 of the Environmental Statement [REP3-019] has been updated at Deadline 5 to clarify that it is the majority of habitat that will be reinstated within 2 years. This does not change the approach to BNG but is a clarification in terms of messaging on the likely realistic worse case for losses being incurred.</p>
2.4.11	<p>3.9 Recognition in Section 5.2.1 that there may be opportunities for habitat enhancement (and not simply reinstatement) within areas of temporary construction, such as construction compounds, is welcome.</p>	<p>The Applicant notes that West Sussex County Council welcomes the recognition that there may be opportunities for habitat enhancement (and not simply reinstatement) within areas of temporary construction, such as construction compounds in Section 5.2.1 within Appendix 22.15: Biodiversity Net Gain Information, Volume 4 of the Environmental Statement [REP3-019].</p>
2.4.12	<p>3.10 Some of the tables, notably Table 4-8, would benefit from further breakdown and explanation. It is suggested that Table 4-8 would be easier to interpret if the column headings were presented as unit type, baseline units, post-construction units, number of units required to achieve no net loss, units required to achieve 10% BNG and the total number of units required to deliver the Project.</p>	<p>The Applicant notes that Appendix 22.15: Biodiversity Net Gain Information, Volume 4 of the Environmental Statement [REP3-019] has been updated at Deadline 5 to include further breakdown and column headings changed to provide clarity.</p>

Ref	Deadline 4 submission	Applicant's response
2.4.13	3.11 It would be helpful if Section 5.4 (Securing Biodiversity Net Gain) could be expanded to describe all of the stages and mechanisms involved in securing BNG, including the proposed stage specific BNG strategies, Section 106 agreements and conservation covenants.	<p>The Applicant notes that Section 5.4 within Appendix 22.15: Biodiversity Net Gain Information, Volume 4 of the Environmental Statement [REP3-019] has been updated at Deadline 5 to outline that Section 106 or conservation covenants would be used to secure the biodiversity units.</p> <p>The Applicant has provided a further detailed response to the Examining Authority's Second Written Questions BNG 2.4 with respect to proposed content of the stage specific BNG strategies in Table 2-6 within Applicant's Responses to Examining Authority's Second Written Questions (ExQ2) (Document Reference:8.81).</p>
Traffic Generation Technical Note, Rev C (REP3-022)		
2.4.14	3.12 WSCC previously commented on the use of estimated traffic flows for Michelgrove Lane (P) and Kent Street (U) [REP2-034]. Traffic data has been obtained for Kent Street, leaving only Michelgrove Lane where flows are estimated. For the purposes of the Traffic Generation Technical Note, whilst surveyed data could be sought, in practice, this is considered unlikely to alter the conclusions arising from using the traffic estimates. The use of estimated traffic flows for Michelgrove Lane is therefore accepted by WSCC.	<p>The Applicant acknowledges West Sussex County Council's comment that the estimated traffic flows for Michelgrove Lane are accepted.</p> <p>The Applicant notes that traffic survey data has since been collected for Michelgrove Lane and Kent Street between Wednesday 8 May and Tuesday 14 May 2024. The results of these traffic surveys have been incorporated into an update of 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] at Deadline 5.</p>
2.4.15	3.13 As noted elsewhere within this response, there needs to be further engagement concerning those activities permitted during the 'shoulder hour' as the issues relate to wider impacts beyond just the operation of the highway network.	<p>As detailed within Section 4.4 of the Outline Code of Construction Practice [REP4-043] the shoulder hour will be for mobilisation and shut down of construction activities. The activities permitted during the shoulder hour includes staff arrivals and departures, briefing and toolbox talks, deliveries to site and unloading, and activities includes site and safety inspections and plant maintenance. Such activities shall not include noise generating activity including use of heavy plant or activity results in impacts between objects resulting in loud noise, ground breaking or earthworks.</p>
Outline Operational Drainage Plan (REP3-023)		
2.4.16	3.14 This outline document adequately addresses the questions and concerns raised by WSCC, as the LLFA, to date. Clearly, the Applicants commitments around flood risk,	<p>The Applicant notes and welcomes comments from West Sussex County Council as the Lead Local Flood Authority (LLFA) on the Outline Operational Drainage Plan and commitments. The Applicant has no further comments to make in relation to flood risk, drainage and water management.</p>
2.4.17	drainage, and water management will be monitored during the detailed design and construction phases.	
2.4.18	3.15 Following engagement with the Applicant, one new commitment (C-293) has been added relating to undertaking ground investigation and groundwater monitoring at the substation site at the detailed design stage. WSCC, as LLFA, are happy with the wording of this commitment which states: Commitment C-293: <i>RED will undertake ground investigation at the substation site at the detailed design stage, including groundwater monitoring in at least one appropriate location in close proximity to the watercourse to the south of the site, for one winter period (September to April). This would be carried out to inform the detailed design of the substation, including design of the drainage system and its associated landscaping and planting measures.</i>	<p>Section 2.4.17 of the Outline Operational Drainage Plan [REP4-041] acknowledges that groundwater monitoring would be carried out to inform the detailed design of the onshore substation, including design of the drainage system and its associated landscaping and planting measures.</p>

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	<p>3.16 It should however be noted in Section 2.4.17, that proposed planting could change post decision, given this will need to be informed by groundwater monitoring that has yet to be undertaken.</p>	
<p>Outline Code of Construction Practice, Rev C (OCoCP) (REP3-025)</p>		
2.4.19	<p>3.17 Working Hours (Section 4.4) - WSCC consider that shoulder hours for deliveries in some sensitive locations may not be appropriate (e.g. where there are sensitive receptors proximate that could be affected by HGV noise and reversing alarms). Where no highway safety implications would result (noting the potential for additional movements in peak hours) this should be considered. Further, clarification should be made that working hours would also apply to the use of any generators (continuous use of which at construction compound locations resulted in complaints for Rampion 1 OWF).</p>	<p>The requirement for deliveries during shoulder hours and potential restrictions to avoid sensitive receptors (where specifically justified or required) will be determined during the detailed design phase following further development of the construction programme. Such restrictions can be included within detailed construction traffic management strategies, which would need to be approved West Sussex County Council and Local Planning Authority in accordance with Requirement 24 of the Draft Development Consent Order [REP4-004]. However, the Applicant considers that the shoulder hours (07:00 – 08:00 and 18:00 – 19:00) secured through the Outline Code of Construction Practice [REP4-043] (paragraph 4.4.2) are within periods that are considered daytime (07:00-19:00) by <i>British Standard (BS) 5228-1:2009+A1:2014 Code of practice for noise and vibration control on construction and open sites – Part 1: Noise</i> and therefore such noises are consistent with activities that would usually be considered acceptable within these hours on other construction sites. It is also worth noting that paragraph 2.6.2 of Outline construction method statement [APP-255] specifies the use of white noise warning devices for reversing.</p> <p>The activities permitted during the shoulder hours include staff arrivals and departures, briefings and toolbox talks, deliveries to site and unloading, and activities including site and safety inspections and plant maintenance. Such activities shall not include noise generating activity including use of heavy plant or activity resulting in impacts between objects resulting in loud noises, ground breaking or earthworks.</p> <p>Operation of generators will be determined during detailed design and will be compliant with limits determined in the Noise Assessment and the good practice principles described in the Outline Noise and Vibration Management Plan [REP3-054].</p>
2.4.20	<p>3.18 In general, the updated VRPs are welcomed, including the consolidated plans which allow for easier review. However, it is also concerning that these seem to show an increase in the volume of clearance/extent of affected features than previously identified. WSCC have a number of additional comments regarding the VRPs, which are given below:</p>	<p>The increase in habitat loss predicted is due to further design of access points in response to the Examining Authority's request for further detail (Action Point 23) at Issue Specific Hearing 1 [EV3-020]. The Applicant is aiming to provide as much detail as possible based on the level of design information that is available within the bounds of the Rochdale Envelope (Advice Note Nine: Rochdale Envelope (Planning Inspectorate, 2018)). The losses represent the realistic worst case scenario and Appendix B: Vegetation Retention and Removal Plans in the Outline Code of Construction Practice [REP4-043] have been updated (provided as a stand alone document by the Applicant in the Outline Vegetation Retention and Removal Plan (Document reference: 8.87) at Deadline 5) based on a request for a consolidated output on vegetation loss from the Examining Authority (Action Point 33 within Action Points arising from Issue Specific Hearing 2 (ISH2) [EV5-018]).</p>
2.4.21	<ul style="list-style-type: none"> Additional keys on VRPs would provide better clarity of constraints; such as: indicators of important hedgerow, TPOs, ancient woodland, veteran trees, haul roads, and access points with their indicative alignment and visibility splays. 	<p>As noted in reference 2.1.26, a further update has been applied to Appendix B: Vegetation Retention and Removal Plans in the Outline Code of Construction Practice [REP4-043] (provided as a stand alone document by the Applicant in the Outline Vegetation Retention and Removal Plan (Document Reference: 8.87) at Deadline 5). The update includes</p>

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		<p>important / potentially important hedgerows, tree preservation orders and losses that are permanent shown on a consolidated plan.</p> <p>It is noted that temporary construction haul road positioning will be within the indicative onshore cable corridor and therefore, it is not considered by the Applicant possible to show at this stage the Outline Vegetation Retention and Removal Plan (Document Reference: 8.87) as the associated losses would not necessarily be representative at the detailed design phase (e.g. at this stage there is not the detailed design information available to show avoidance of individual trees or the avoidance of hedgerow by targeting existing gaps). Visibility splays will be delivered through vegetation management (as opposed to loss), unless losses are already shown in the Outline Vegetation Retention and Removal Plan (Document Reference: 8.87) submitted at Deadline 5</p>
2.4.22	<ul style="list-style-type: none"> VRPs currently identify features including woodlands, tree lines and hedgerows which are proposed to be impacted; also indicated is the length of impacts to the proposed feature. This does not provide adequate detail as to the area of feature impacted to provide a realistic worst case scenario. For example, H505 (west of Kent Street) is shown to be cleared to 20m which whilst stated elsewhere to be required for the access point A-61, there is no control in place to limit this total clearance to any point along the circa. 550m length of hedgerow as displayed. WSCC request that VRPs clearly show the area of intended impact on these features. 	<p>The Outline Vegetation Retention and Removal Plan (Document Reference: 8.87) submitted at Deadline 5 show the entirety of any feature within the proposed DCO Order Limits. This is to avoid an unrepresentative impression on the level of design detail being given. Currently the exact routeing of onshore cables and temporary construction haul roads for example will not be known until the detailed design phase. The implementation of commitment C-292 (Commitments Register [REP4-057]) ensures that, at the detailed design phase, the mitigation hierarchy is implemented so that the design seeks to avoid features at hedgerow crossings such as standard trees and aims for gaps in currently defunct hedgerows. At access points there is more knowledge of where access will be taken, although there is still opportunity for micro-siting.</p>
2.4.23	<ul style="list-style-type: none"> Concerns remain as to whether VRPs reflect visibility requirements for access points accurately, which will likely result in considerably more hedgerow and tree losses at the detailed design stage. This reiterates the points previously made by WSCC around the potential for visual impacts (by opening views along the cable corridor and impacting upon key landscape features of the various landscape character areas) and the extent to which the Landscape and Visual Impact Assessment (APP-059) has considered this. 	<p>The visibility splays have been reviewed by the Applicant including the engineering and environmental teams including transport, ecology, landscape and visual and arboriculture. The landscape and visual impact assessment has been updated at Deadline 5 in line with this review and is based on a realistic worst case scenario.</p>
2.4.24	<ul style="list-style-type: none"> WSCC remains concerned with the wording of Commitment C-220 and paragraph 5.6.28 of the OCoCP. It is considered that any losses over those stated in the VRP must be agreed in writing by the relevant planning authority (not only in consultation with them). 	<p>The Applicant notes that the production of stage specific Vegetation Retention and Removal Plans are secured through Requirement 40 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5). This provides the mechanism for the relevant local planning authorities (in consultation with the Environment Agency, the statutory nature conservation body, the highway authority and the lead local flood authority) to agree the extent of vegetation clearance. The information that would be produced via commitment C-220 (Commitments Register [REP4-057]) informs the discussions that will occur within this forum.</p>
2.4.25	<ul style="list-style-type: none"> The current wording of paragraph 5.6.28 now also states that “reductions in losses” from that stated within VRPs will also be justified in consultation with the relevant planning authority. As identified within Appendix A of this document, many hedgerows adjacent to access points are shown to be cleared within the VRPs, rather than the expected ‘coppicing’ (reduction in height to 0.9m) as stated within paragraph 5.6.35 and Commitment C-224. It is paramount that the VRPs accurately present realistic vegetation requirements proposed by the Applicant. 	<p>The Applicant notes that the clearances at access points in the Outline Vegetation Retention and Removal Plan (Document Reference: 8.87) are largely showing the bell mouth size required to let through the largest vehicle possible (realistic worst case scenario). This is often based on the use of a large low loader that would be carrying cable drums or other bulk deliveries coppicing will be shown in the stage specific Vegetation Retention and Removal Plans.</p>

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2.4.26	<ul style="list-style-type: none"> Paragraph 5.6.3 suggests that haul roads are shown on VRPs whereby vehicular access is still required despite trenchless crossings being utilised. This has not been identified on VRPs and should be addressed by the Applicant. 	<p>For clarity, the majority of trenchless crossing points do not have haul roads passing within the section. However due to access restrictions, haul roads are required in locations that are reflected in the Outline Vegetation Retention and Removal Plan (Document Reference: 8.87).</p>
2.4.27	<ul style="list-style-type: none"> Paragraph 5.6.32 suggests Commitment C-224 ensures that habitat losses are minimised where woodlands will be crossed using open trenching techniques. The relation to this commitment in the context given is not understood and further clarification is required. 	<p>The Applicant clarifies that paragraph 5.6.3 within the Outline Code of Construction Practice [REP4-043] should refer to commitment C-204 (Commitments Register [REP4-057]) rather than commitment C-224 and this has been updated at Deadline 5.</p>
2.4.28	<ul style="list-style-type: none"> Commitment C-224 states “Where vegetation clearance is required to provide visibility splays at access points for the purposes of safe access and egress any hedgerows that require cutting will be retained, by cutting to a height of 90cm where safe to do so (any hedgerow trees will be considered on an individual basis). These “coppiced” hedgerows are shown on the VRPs that accompanies the Outline Code of Construction Practice.” Following an exhaustive review of access points and VRPs by WSCC (identified within Appendix A of this response), no hedgerow has been identified for coppicing for the entire Project despite numerous potential opportunities. 	<p>The commitment C-224 (Commitments Register [REP4-057]) has been updated at Deadline 5 to remove reference to the vegetation retention plans and now states:</p> <p><i>“Where vegetation clearance is required to provide visibility splays at access points for the purposes of safe access and egress any hedgerows that require cutting will be retained, by cutting to a height of 90cm where safe to do so (any hedgerow trees will be considered on an individual basis). These “coppiced” hedgerows will be agreed with the relevant highways authority and displayed on the stage specific Vegetation Retention and Removal Plan that will accompany the stage specific Code of Construction Practice secured by DCO Requirements 22 and 40.”</i></p> <p>Vegetation management at access points is not shown in the Outline Vegetation Retention and Removal Plan (Document Reference: 8.87) as these will be designed and agreed with the local highways authority at the detailed design stage.</p>
2.4.29	<ul style="list-style-type: none"> Paragraph 5.6.37 suggests that coppiced tree lines will be shown as ‘temporarily lost’ within VRPs. None have been identified and no key is provided for this on the key for VRPs. Therefore, it is not known if tree line clearances shown within VRPs are permanently or temporarily lost and further clarification is required. WSCC requests amendment of Commitment C-224 to reflect tree lines. 	<p>The updated consolidated Outline Vegetation Retention and Removal Plan (Document Reference: 8.87) (provided at Deadline 5) shows the location of all permanent losses. The majority of vegetation loss is temporary and will be subject to reinstatement. Where hedgerows or tree lines are to be reduced in height to 0.9m for visibility splays these have not been included in the Outline Vegetation Retention and Removal Plan (Document Reference: 8.87). Temporary losses shown are those where the vegetation is to be removed, as opposed to managed. The visibility splays in which coppicing (defined as the reduction in height to 0.9m for the Proposed Development) is to take place will be determined post consent in line with other traffic management measures to be agreed with the relevant highway authority. These will be shown on the stage specific Vegetation Retention and Removal Plans secured through Requirement 40 of the Draft Development Consent Order [REP4-004].</p>
2.4.30	<ul style="list-style-type: none"> In light of the above statements, WSCC believes there is an opportunity to reduce hedgerow and treeline loss through the consideration of coppicing which would demonstrate a mitigation hierarchy has been applied for vegetation management, rather than clearance as the starting point. 	<p>The implementation of the mitigation hierarchy during the detailed design stage is outlined in commitment C-292 (Commitments Register [REP4-057]) and included within the Outline Code of Construction Practice [REP4-043] and secured via Requirement 22 within the Draft Development Consent Order [REP4-004]. Further commitment C-224 (Commitments Register [REP4-057]) demonstrates the intended approach to managing vegetation at visibility splays to minimise direct losses.</p>
2.4.31	<ul style="list-style-type: none"> Paragraph 5.6.43 suggests that hedgerows which are ‘temporarily lost’ due to access works are shown within VRPs. However, hedgerows requiring loss to enable upgrades to operational access points (which are permanent), such as A-42, are shown as ‘cleared to xx m’ which is suggestive of a temporary loss, despite the loss being partially or entirely permanent. Therefore it is not known if VRPs are accurately identifying both temporary and permanent 	<p>The Applicant notes that at the access point to the onshore substation at Oakendene and to the field north of the existing National Grid Bolney substation permanent losses of hedgerow are shown the Outline Vegetation Retention and Removal Plan (Document Reference: 8.87) submitted at Deadline 5. All other losses at construction access points are temporary as</p>

Ref	Deadline 4 submission	Applicant's response
	hedgerow loss, nor if reinstatement can occur at such locations and further clarification is required.	shown in the Outline Vegetation Retention and Removal Plan (Document Reference: 8.87) (submitted at Deadline 5).and will be reinstated.
2.4.32	<ul style="list-style-type: none"> WSSC would welcome a commitment within the OCoCP and OLEMP which details how reinstatement of access points will be addressed due to the above stated uncertainties. 	<p>The Applicant notes that Commitment C-220 (Commitments Register [REP4-057]) ensures the identification of all permanent and temporary losses as described in Appendix B: Vegetation Retention and Removal Plans in the Outline Code of Construction Practice [REP4-043] (updated at Deadline 5) (provided as a stand alone document by the Applicant in the Outline Vegetation Retention and Removal Plan (Document Reference: 8.87) at Deadline 5). Details on reinstatement of all temporary losses is secured through the provision of stage specific Landscape and Ecology Management Plans (as per Requirement 12 within the Draft Development Consent Order [REP4-004]) and a stage specific Construction Method Statement which will set out a protocol for the restoration and reinstatement of land used temporarily for construction during that stage and the timing in accordance with commitment C-103 in the Commitments Register [REP4-057] (updated at Deadline 5) which is secured via Requirement 23 (h) within the Draft Development Consent Order [REP4-004].</p>
2.4.33	<ul style="list-style-type: none"> WSSC has raised concerns over the adequacy of the VRPs on numerous occasions. Despite the Applicants acknowledgement to these concerns at topic specific meetings, issue specific hearings, in response to WSSCs LIR (Appendix G), and in response to the ExAs Written Questions (TE 1.8), with the response that a full multi-discipline review of errata has taken place, WSSC are still identifying the same issues as well as additional ones. For example, H307 shown for retention where construction access is required, missing tree lines and hedgerows between H284 and H277 adjacent, with many more new examples identified within Appendix A of this response. WSSC request a further review of VRPs and advise a direct response is provided for findings identified in Appendix A of this response and Appendix G of the WSSC LIR (REP2-020). WSSC has requested further engagement with the Applicant on these matters is needed. 	<p>The Applicant notes that as part of the Examining Authority's Further Written Questions and requests for information [PD-012] received at Deadline 4, the Examining Authority requested that the Applicant provide a consolidated (as far as possible) 'Vegetation Retention and Loss Plan' at Deadline 5 as a stand alone document. This has been provided by the Applicant in the Outline Vegetation Retention and Removal Plan (Document Reference: 8.87) at Deadline 5 and includes information on important and potentially important hedgerows and tree preservation orders and where permanent vegetation losses are to occur. This is secured through Requirement 40 within the Draft Development Consent Order [REP4-004].</p> <p>The Applicant notes that H307 already has a track running through it (that was a construction access for a slurry pit extension) and therefore additional loss is not required, this is the reason it is shown as retained. It is likely that the confusion is driven by the line feature for the hedgerow not showing a break where the existing gate is noted. This is because it is recorded as a single feature as would be usual.</p> <p>The Applicant notes that H277 is correctly shown as 'notched 14m' in the Outline Code of Construction Practice [REP4-043] (as it was at Deadline 3).</p> <p>The Applicant notes that H284 is correctly shown as retained as it will be crossed by trenchless crossing (TC-22) in the Outline Code of Construction Practice [REP4-043] (as it was at Deadline 3).</p> <p>These issues were discussed in meeting with West Sussex County Council on 26 June 2024 and Appendix B: Vegetation Retention and Removal Plans in the Outline Code of Construction Practice [REP4-043] has been further updated and provided as a stand alone document by the Applicant in the Outline Vegetation Retention and Removal Plan (Document Reference: 8.87) at Deadline 5 in line with these discussions.</p>
2.4.32	<ul style="list-style-type: none"> Woodland ref. W3713 has been shown for partial clearance to facilitate the cable corridor within the Arboricultural Impact Assessment (APP-194), though both the indicative landscaping plans and VRPs show this woodland as being retained. This needs to be 	<p>The Applicant notes that this has been corrected in Appendix 22.16: Arboricultural Impact Assessment, Volume 4 of the Environmental Statement [REP4-037] at Deadline 5.</p>

Ref	Deadline 4 submission	Applicant's response
	assessed in conjunction with the Project arboriculturist and identified consistently on the VRP and AIA plans.	
2.4.35	<ul style="list-style-type: none"> VRP (Figure 7.2.2c (B)) does not clearly identify proposed vegetation management for ancient woodland west of Michelgrove Park, leading to access point A-25. Combined VRP (Figure 7.2.6d) indicates these features are affected. Further clarification is required as well as revised detail within VRPs. 	<p>Access A-25 is an existing tarmac track (that turns to a hardcore forestry track, approximately half way along). Its existing use is to access the woodland for management and is passable by Heavy Goods Vehicles (HGVs). Access A-25 is an operational access which will require infrequent use of a 4x4 vehicle or light van and therefore no vegetation management is needed.</p>
2.4.36	<ul style="list-style-type: none"> WSPCC believe a hedgerow between and connecting H506 and H518 within the proposed Oakendene substation site has not been identified within VRPs. 	<p>The Applicant notes that the location referred is not recorded as a hedgerow in Appendix 22.3: Extended Phase 1 habitat survey report, Volume 4 of the Environmental Statement [APP-181] and therefore not considered a hedgerow by the Applicant. It is noted on the indicative landscape plan (see Outline Landscape and Ecological Management Plan [REP4-047]) as being a location for advanced planting to bolster habitat connectivity along the western edge of the onshore substation site at Oakendene.</p>
2.4.37	<ul style="list-style-type: none"> WSPCC still have concerns over how quickly reinstatement will be possible given the exclusion of accesses, haul roads and compounds from Commitment C-103 (and based on experience of Rampion 1 OWF, where the large areas of reinstatement were only possible upon full completion of construction activities). 	<p>The Applicant notes that at this stage the scheduling of reinstatement works is unknown although the intention will be to minimise the time between removal and land replacement, noting the benefits this would bring in line Appendix 22.15: Biodiversity Net Gain Assessment, Volume 4 of the Environmental Statement [REP3-019] and commitment C-292 (Outline Code of Construction Practice [REP4-043]).</p>
2.4.38	<ul style="list-style-type: none"> As identified on occasions within Appendix A of this response, vegetation clearance adjacent to certain access points which are for both construction and operational use, have been based on visibility splays whereby a temporary speed restriction has been accounted for. It is not clear if the vegetation clearance stated will be suitable for operational use of these accesses once temporary speed restrictions are removed following completion of construction. 	<p>The Applicant notes that the provision of the detailed design of each access will include the visibility splay information and be provided in accordance with Requirements 15 and 16 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5). The Applicant has also provided an update to commitment C-224 (see Commitments Register [REP4-057] updated at Deadline 5) to note that areas of coppicing related to visibility splays will be shown on the stage specific Vegetation Retention and Removal Plans based on this detailed design.</p>
2.4.39	<ul style="list-style-type: none"> Submission of indicative visibility splay information for these access points, at the relevant speed for its intended use, would demonstrate to WSPCC that the above considerations have been accounted for. Visibility splays should also be shown on VRPs to aid understanding of vegetation loss requirements. 	<p>The operational access requirements are as per paragraph 4.8.19 of Chapter 4: The Proposed Development, Volume 2 of the Environmental Statement [APP-045], as follows:</p> <p><i>“Maintenance of the onshore cable is expected to be minimal. During operation and maintenance, periodic testing of the cable is likely to be required (every two to five years). This will require access to the link boxes at defined inspection points along the onshore cable route. Unscheduled maintenance or emergency repair visits will typically involve attendance by up to three light vehicles, such as vans, in a day at any one location. The vehicles will gain access using existing field accesses and side accesses as shown on the Onshore Works Plans (Document Reference: 2.2.2) to reach the relevant sections of the onshore cable.”</i></p> <p>The requirement for access and visibility related to this use is minimal compared to the construction phase, and the above described usage is equivalent to the current usage of the existing field access which are subject to reinstatement.</p>
2.4.40	<ul style="list-style-type: none"> As identified within comments on the Outline Construction Traffic Management Plan, Revision D (OCTMP) (REP3-030), WSPCC have raised concerns for the use of Manual for Streets (MfS) being used for the design of accesses in certain scenarios (for roads with 	<p>Please refer the Applicant's response at references 2.1.53 to 2.1.56.</p>

Ref	Deadline 4 submission	Applicant's response
	40mph or above speed limits). Any changes made to visibility splays will need to be reflected within VRPs and associated documentation.	
Outline Construction Traffic Management Plan, Revision D (OCTMP) (REP3-030)		
2.4.41	3.19 WSCC has reviewed a number of iterations of the OCTMP and the measures contained within the OCTMP are largely agreed. It is recognised that these measures provide a framework that will be taken forward and included within more detailed site/phase specific construction management plans under the relevant DCO Requirement. Further comments on Revision D are given below:	The Applicant welcomes West Sussex County Council's comment and agrees that detailed points will be contained within stage specific construction traffic management plans, developed in accordance with the Outline Construction Traffic Management Plan [REP4-045] and agreed with the local highway authority as per Requirement 24 of the Draft Development Consent Order [REP4-004] .
2.4.42	• Table 2-1 (section 2.5.2) summarises the WSCC comments made against the OCTMP within the WSCC Local Impact Report (REP1-054). The Applicant's responses are noted.	Noted, the Applicant has no further comments at this stage.
2.4.43	• 3.6.5 – WSCC has commented previously regarding those activities to be permitted during 'shoulder hours'.	Please refer to the Applicant's response at reference 2.1.25 .
2.4.44	• 4.1.9 – The Applicant's comments concerning the timing and provision of Road Safety Audits as recommended by WSCC is noted. This is also included within Appendix C of the OCTMP.	Noted, the Applicant has no further comments at this stage.
2.4.45	• 4.4.1 – The addition of the reference to Manual for Streets (MfS) being used for the design of accesses is noted. In referring to MfS, it is acknowledged that there are two publications (MfS1 and MfS2). These are effectively companion documents, with MfS2 providing further application of the principles in MfS1. Unless specific guidance or section from MfS1 or MfS2 is being quoted, reference to MfS should be taken as meaning both MfS1 and MfS2 given these are companion documents.	The Applicant notes this comment and has updated the Outline Construction Traffic Management Plan [REP4-045] (submitted at Deadline 5) with reference to the two Manual for Streets publications (MfS1 (<i>Manual for Streets</i> , Department for Transport and Ministry of Housing, Communities & Local Government, 2007) and MfS2 (<i>Manual for Streets 2</i> , Chartered Institution of Highways & Transportation, 2010)).
2.4.46	• The use of MfS has previously been recommended by WSCC and is accepted where posted speed limits are 30mph or less. It is also indicated to use MfS standards where the speed limit is 40mph and in some instances 60mph. WSCC recognise the guidance within MfS2 where it is advised that MfS1 standards are used as the starting point by designers but goes on to make reference to the use of MfS respecting the local context. As a result, it is not a given that MfS will be appropriate for all 40mph or higher speed limits particularly where the functional context of the road is one of traffic movement and is located outside of an urban area.	The Applicant accepts this comment and has updated the visibility splay requirements for accesses A-05, A-06, A-32, A-33, A-34, A-35, A-47, A-49, A-52, A-53, A-54, A-55, A-59, A-60, A-61, A-64 and A-62 as detailed within Table 4-3 of the Outline Construction Traffic Management Plan [REP4-045] updated at Deadline 5.
2.4.47	• 4.6.7, Table 4-2 – As noted in 4.4.1, MfS standards are indicated as applicable to roads with a posted speed limit of 40mph and in some instances 60mph. A caveat should be included to say where the posted speed limit is 40mph, that the use of Design Manual for Roads and Bridges (DMRB) or MfS standards are to be viewed against the local context and agreed with WSCC.	The Applicant notes this comment and provided an update to the Outline Construction Traffic Management Plan [REP4-045] updated at Deadline 5 to state that in some locations use of Design Manual for Roads and Bridges (DMRB) or Manual for Streets visibility splays will need to be agreed with West Sussex County Council during detailed design.
2.4.48	• 4.6.9, Table 4-3 – Looking at the specific locations where the speed limit is 40mph and MfS standards proposed for the access designs, it is apparent that the majority, if not all, the locations are such that MfS may not be appropriate due to the local context. This is particularly so for accesses A-05 (serving the site compound at Climping), A-32, 33, 34, 35 (which are all onto the heavily trafficked rural A283), and A-52 (onto the rural A281).	Notwithstanding this, an update has been applied to Table 4-3 for accesses A-05, A-32, A-33, A-34, A-35, A-49, A-52 and A-62 to apply Design Manual for Roads and Bridges visibility splays requirements. Accesses A-59 and A-60 have also been updated to apply Manual for Streets visibility splay requirements to ensure consistency with accesses A-61 and A-64.

Ref	Deadline 4 submission	Applicant's response
2.4.49	<ul style="list-style-type: none"> Where MfS standards are being used for 60mph speed limits, this in principle isn't unacceptable for lightly trafficked country lanes. There are some inconsistencies in Table 4-3 that need to be revised by the Applicant however. As examples, A-49 (onto the B2135) is indicated as MfS whereas A-50 to the north is not, A-62 (Oakendene Industrial Estate onto the A272) is indicated being appropriate for MfS, and A-64 (Kent Street) is indicated as MfS whereas A-59, 60 and 61 are not. 	<p>The Applicant notes this comment and to ensure visibility splay requirements are robust has updated these within Table 4-3 for access A-05, A-06, A-32, A-33, A-34, A-35, A-47, A-49, A-52, A-53, A-54, A-55, A-59, A-60 and A-62 of the Outline Construction Traffic Management Plan [REP4-045] updated at Deadline 5.</p>
2.4.50	<ul style="list-style-type: none"> 5.6, Table 5-3 – There still appears to be a discrepancy for A-56 between the two way HGVs movements indicated in this table and Table 6-7 of the Traffic Generation Technical Note. 	<p>The Applicant provided an update to Table 6-7 of Appendix 23.2: Traffic Generation Technical Note, Volume 4 of the Environmental Statement (ES) [REP3-021] to ensure consistency with Table 5-3 of the Outline Construction Traffic Management Plan [REP4-045] updated at Deadline 5. It should be noted that the discrepancy was a typographical error and did not impact upon the peak construction traffic modelling used within the ES.</p>
2.4.51	<ul style="list-style-type: none"> 8.2 – The summary of mitigation for A-26 and A-28 is noted. Detailed comments on this mitigation are made against the 'Traffic Management Strategy' within Appendix D. 	<p>The Applicant has provided responses to West Sussex County Council's comments on Appendix D 'Traffic Management Strategy' and details of any amendments made in this table below (reference 2.1.67 to 2.1.88).</p>
2.4.52	<ul style="list-style-type: none"> 8.2.16 – The principle of using temporary speed limits is accepted, albeit there will need to be justification provided as to why other mitigation is not appropriate. The exact locations and extents will need to be agreed through stage specific CTMPs. Notwithstanding the minimum recommended speed limit length within the WSCC Speed Limit Policy, WSCC would request that temporary speeds limits are localised around the access locations (unless agreed otherwise). Minimising lengths of temporary speed limits along with the presence of warning signage and actual turning vehicles will aid compliance with the temporary limit. 	<p>The Applicant notes the requirement for temporary speed limits and provided an update to paragraph 8.2.16 of the Outline Construction Traffic Management Plan [REP4-045] submitted at Deadline 4.</p>
2.4.53	<ul style="list-style-type: none"> 8.4 - As a general point, WSCC are aware of a number of projects that may overlap with the Rampion 2 proposals. This includes the battery energy storage facility west of Kent Street (Horsham District Council reference DC/24/0054) as well as solar farm at Burnthouse Lane (HDC reference DC/23/2172). Neither of the two examples are permitted but there should be a commitment for the Applicant to co-ordinate with other project proposals where necessary. An additional point should be added within 8.4. 	<p>The Applicant notes the requirement for coordination between construction projects taking place in the vicinity of the Proposed Development and has provided an update to Section 8.4 of the Outline Construction Traffic Management Plan [REP4-045] submitted at Deadline 5.</p>
2.4.54	<ul style="list-style-type: none"> 8.4.24 – The potential use of other ports for Abnormal Indivisible Loads (AILS) is noted. AILS are expected to be relatively few in number and will be subject to separate statutory provisions within The Road Vehicles (Authorisation of Special Types)(General) Order 2003. Through the 2003 Order, a haulier is required to give notice and agree a suitable route with WSCC and the Police ahead of AILs movements occurring. The movement and routing of AILs are therefore controlled by other means and an AILs assessment identifying the port location is therefore unnecessary. It will still of course be appropriate to identify where AILs are expected for the purposes of the design of the access works, the majority of which are to be agreed post examination. 	<p>Noted, the Applicant has no further comments at this stage.</p>
2.4.55	<ul style="list-style-type: none"> Appendix A of this response highlights a number of concerns which related to the OCTMP. Predominantly Appendix A and the consideration of vegetation management to facilitate access points and their visibility splays. There remains a general concern that detailed access design will result in further hedgerow and tree loss than shown within VRPs. 	<p>The Applicant has reviewed vegetation losses and the outcome of this review is presented in the Deadline 3 Submission – Technical Note Construction Access Update Summary [REP3-055]. The Outline Code of Construction Practice [REP3-025] Appendix B Vegetation Retention and Removal Plans was also updated at Deadline 3 to include the changes in vegetation retention presented in the Deadline 3 Submission – Technical Note Construction Access Update Summary [REP3-055], any vegetation management such as</p>

Ref	Deadline 4 submission	Applicant's response
2.4.56	<ul style="list-style-type: none"> Section 4.4.2 states “Where it is proposed to use existing field gate accesses or farm tracks where there is no existing visibility splay, a visibility splay will be provided through the medium of coppicing (to below 1m as set out in DMRB Figure 3.3 (Standards for Highways, 2021)). At this stage, these visibility splays have been provided to design standards for the speed limit of the road and not aligned to DMRB CD123 Figure 3.3 “Direct Accesses” (Standards for Highways, 2021)”. As demonstrated within Appendix A of this response, and as discussed within section 3.18, ‘coppicing’ has not been stated within VRPs for this purpose. 	<p>coppicing will be shown in the stage specific Vegetation, Retention and Removal Plan. This information is now provided as a stand alone document by the Applicant in the Outline Vegetation Retention and Removal Plan (Document Reference: 8.87) at Deadline 5.</p> <p>The Applicant notes that the provision of the detailed design of each access will include the visibility splay information and be provided in accordance with the Draft Development Consent Order [REP4-004] (updated at Deadline 5) Requirements 15 and 16. The Applicant has also provided an update to commitment C-224 (see Commitments Register [REP4-057] updated at Deadline 5) to note that areas of coppicing will be shown on the stage specific Vegetation Retention and Removal Plans based on this detailed design. This would not constitute loss and therefore the Outline Vegetation Retention and Removal Plan (Document Reference: 8.87) at Deadline 5 does not under record the vegetation loss as these will be allowed to reestablish.</p>
2.4.57	<ul style="list-style-type: none"> Table 4-1 ‘Temporary construction and operational accesses’ states certain access points as existing, despite a new access being required, A-67 for example. Section 4.5 may also require amendment to reflect A-67 if retained for operational use. 	<p>The Applicant has reviewed Table 4-1 Section 4.5 and Appendix A and provided an update to the Outline Construction Traffic Management Plan [REP4-045] submitted at Deadline 5.</p>
2.4.58	<ul style="list-style-type: none"> As a general point it is concerning that, for the small number of locations where more detailed access design and construction traffic measures have now been provided, these have resulted in the need for additional vegetation losses and introduction of passing bays (both at specific access points and on the wider highway network), both of which are likely to result in increased impacts upon the landscape character and appearance of the affected locality. It is concerning that this could be the case for numerous other accesses/rural highways at the detailed design stage, that the LVIA has not currently considered, and for which reinstatement proposals remain unclear. 	<p>The Applicant has reviewed the construction access requirements at all locations and provided the summary of vegetation losses in the Deadline 3 Submission – 8.61 Technical Note Construction Access Update Assessment Summary [REP3-055]. These have been reflected in the Outline Vegetation Retention and Removal Plan (Document Reference: 8.87) with which stage specific plans shall be in accordance with Requirement 40 within the Draft Development Consent Order [REP4-004].</p> <p>Reinstatement of landscape and habitats will be undertaken in accordance with the stage specific Landscape and Ecology Management Plan to be provided for approval of the relevant planning authority and prepared in accordance with the Outline Landscape and Ecology Management Plan [REP4-047] which has been updated at Deadline 5 to provide further clarity on the reinstatement at construction accesses. Section 2.15 in the Outline Construction Method Statement [APP-255] states “The stage specific CMS will set out a protocol for the restoration and reinstatement of land used temporarily for construction during that stage and the timing in accordance with commitment C-103 in the Commitments Register [REP4-057] (updated at Deadline 5).”</p>
Appendix D – Technical Note – Construction Accesses A-26, A-28, A-61 and A-64 Traffic Management Strategies, Revision A		
2.4.59	<p>3.20 The following are comments against the principles of mitigation shown in the Technical Note. Unless stated, comments are not made against specific numbered points.</p>	<p>Noted, the Applicant has no further comments at this stage.</p>
2.4.60	<p>General Comments</p> <ul style="list-style-type: none"> Clarification is requested if the cable drum HGVs are classed as abnormal loads. These would appear to be by virtue of their length. If they are, these would need to be covered through the AILS Assessment. 	<p>The Applicant has provided an update to the Outline Construction Traffic Management Plan [REP4-045] submitted at Deadline 5 that provides further details on controls for abnormal loads associated with construction of the Proposed Development. This includes restrictions to peak hour movements and further details on notification requirements.</p> <p>It is anticipated that the cable drums will be heavier than 44 tonnes and therefore will be classified as abnormal loads. Whilst it is noted that the low loaders used for swept path analysis contained within Appendix D of the Outline Construction Traffic Management Plan</p>

Ref	Deadline 4 submission	Applicant's response
2.4.61	<ul style="list-style-type: none"> There is a 12 week lead in time of the TTRO required for the 40mph speed limits unless these can be included within the DCO. 	<p>[REP4-045] would also be categorised as abnormal loads due to being longer than 18.65m these vehicles were used to provide a robust assessment. Shorter vehicles may be used by the contractor to transport cable drums and this will be confirmed during detailed design.</p> <p>Article 16 of the Draft Development Consent Order [REP4-004] includes provision for the implementation of temporary speed limits in connection with the construction, operation and maintenance of the Proposed Development. This Article includes a requirement for the Applicant to provide not less than 4 weeks' notice in writing of its intention to apply temporary speed limits.</p>
2.4.62	<ul style="list-style-type: none"> Notwithstanding the requirements within the WSCC Speed Limit Policy concerning minimum lengths of speed limits, the extents of the temporary limits should be confined to the general area of works rather than spread over a significant distance. It is considered that shorter lengths of temporary limit with suitable HGV turning signage and the presence of related construction activities and vehicles will make it more apparent to drivers why the limit is in place and therefore aid compliance. The exact length of any temporary speed limits will need to be agreed with WSCC. 	<p>The Applicant notes the requirement for temporary speed limits and has provided an update to Section 8.2.16 of the Outline Construction Traffic Management Plan [REP4-045] submitted at Deadline 4 (further updated at Deadline 5).</p>
2.4.63	<ul style="list-style-type: none"> Ordinarily a TTRO will be made with an 18 month duration. TTRO with a longer duration can be made but this will need to be specified by the Applicant and discussed with WSCC. 	<p>Please refer to the Applicant's response provided at reference 2.1.69.</p>
2.4.64	<ul style="list-style-type: none"> From ISH 2 on the 16 May 2024, a number of concerns were raised by local residents concerning the management of HGVs and Non-Motorised Road Users (NMUs) primarily on Kent Street. In recognising these concerns, it is apparent that NMUs may be present on Kent Street albeit these are expected to be low levels given the local context. It is also accepted that the level of impact would vary depending on whether access A-61 or A-64 (A-64 is closer to the A272 and requires a short length of Kent Street to be used compared with A-61 that is much further to the south) is in use as well as across the construction period with there being quite well defined traffic peaks. Nevertheless, the Traffic Management strategy should be updated to include specific measures concerning the management of site traffic and NMUs present on Kent Street. These measures may vary depending on the access in use and the level of construction activity. Alongside management measures on Kent Street itself, this could also include notifying residents of impending peak weeks of construction activity. WSCC accept that further detailed measures will be forthcoming as part of subsequent site/phase specific construction traffic management plans. 	<p>The Applicant can confirm that additional information has been provided at Deadline 4 within Section 8 of the Outline Construction Traffic Management Plan [REP4-045] updated 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 [REP4-045] updated at Deadline 4 to provide specific controls for Kent Street.</p> <p>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 accesses A-61 or A-64:</p> <ul style="list-style-type: none"> 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). Construction HGVs will not be released from the compound whilst equestrians are using Kent Street north of accesses A-61 or A-64. This will allow adequate time for the route to be cleared before HGVs travel southbound along Kent Street. 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. 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
2.4.65	<ul style="list-style-type: none"> Whilst the majority of the above refers to Kent Street, there are other similar rural locations where traffic management measures need to account for NMUs. Such management measures should be developed by the Applicant where construction traffic interacts with Public Rights of Way. 	

Ref	Deadline 4 submission	Applicant's response
	<p>20m away. Construction traffic would also be required to give-way to pedestrians and cyclists but without the need to turn engines off.</p> <ul style="list-style-type: none"> Highway verges on Kent Street will be managed for the duration of the construction phase to ensure forward visibility between passing places and allow verges to be used by pedestrians, cyclists and equestrian users if necessary. <p>The same strategy will be adopted for HGVs exiting accesses A-61 and A-64.</p> <p>All Public Rights of Way (PRoWs) affected during onshore construction works are identified in Section 4.3 within the Outline Public Rights of Way Management Plan [REP3-033]. Table 4-1 within the Outline Public Rights of Way Management Plan [REP3-033] includes each PRoW impacted by the onshore elements of the Proposed Development and the type of impact. Paragraph 4.2.5 within the Outline Public Rights of Way Management Plan [REP3-033] secured via Requirement 20 of the Draft Development Consent Order [REP4-004] confirms that no PRoW will be permanently affected by the Proposed Development.</p> <p>Section 5 of the Outline Public Rights of Way Management Plan [REP3-033] outlines the proposed management measures for the impacted PRoWs including (but not limited to):</p> <ul style="list-style-type: none"> Temporary closures and diversions; Managed crossings; Shared routes; Inspection and maintenance; Signage management; and PRoW sequencing. 	
<p>2.4.66</p>	<ul style="list-style-type: none"> The Traffic Management Strategy for Kent Street provides proposed details of four passing places along Kent Street, the widening of western junction with A272, and visibility splay requirements for the junction with A272. The impacts of which to trees, woodlands and hedgerows situated within and outside of the highway has not clearly been demonstrated with the current ES documentation. This is anticipated to result in addition loss or clearance than currently identified in order to carry out construction suitable for the expected loading, resulting in a notable visual change to Kent Street and potentially it's rural character. Control measures should be put in place to ensure any temporary formalisation of passing bays and the widened junction within the highway are returned to their current use. 	<p>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 Draft Development Consent Order [REP4-004]. Reinstatement of the temporary passing places once the construction concluded will be completed in accordance with commitments C-103 and C-199 of the Commitments Register [REP4-057]. As shown in the Outline Vegetation Retention and Removal Plan (Document Reference: 8.87) (submitted at Deadline 5), and as described in section 2.1.185 below regarding confirmation of vegetation loss relevant to accesses A-61 and A-64 along Kent Street, there will be no vegetation loss as a result of passing places along Kent Street. Vegetation management will be in place in these locations only.</p>
<p>2.4.67</p>	<p><i>A280/Michelgrove Lane/Tolmare Farm</i></p> <ul style="list-style-type: none"> The 40mph temporary speed limit is noted. WSCC have consulted on a permanent 40mph speed limit on the A280 Long Furlong from a point west of the Tolmare Farm access (A-28) through to the A24. This is due to be installed later in 2024. The extents of the temporary 40mph can therefore be revised upon this installation. 	<p>The Applicant can confirm that an updated version of the Construction Accesses A-26, A-28, A-61 and A-64 Traffic Management Strategies was included within Appendix D of the Outline Construction Traffic Management Plan [REP4-045]. This update covered WSCC comments 2.1.75 to 2.1.80. Additional responses to individual points are also provided in Table 2-2 of the Outline Construction Traffic Management Plan [REP4-045] submitted at Deadline 5.</p>

Ref	Deadline 4 submission	Applicant's response
2.4.68	<ul style="list-style-type: none"> The swept paths for HGV tipper trucks indicate that a vehicle turning left from Michelgrove Lane (A-26) onto the A280 would occupy the southbound lane of the A280 to complete the manoeuvre. Given the speed and volume of traffic on the A280, and the number of exiting HGV movements, this is not accepted by WSCC. Where possible all exiting HGVs will need to be directed to using the temporary signals at Tolmare Farm (A-28). When this is not possible (i.e. when the haul road to complete the route to A-28 is being installed or removed), some form of traffic management or turning restriction would be necessary for HGVs at the A280/Michelgrove Lane junction. 	
2.4.69	<ul style="list-style-type: none"> LGV access is indicated to be unrestricted to Michelgrove Lane (A-26) allowing LGVs to arrive and depart in any direction. What is the achievable forward visibility for a trailing southbound vehicle to a stationary vehicle waiting to turn right into Michelgrove Lane, and likewise what is the forward visibility for a vehicle turning right onto Michelgrove Lane to northbound traffic? Further consultation with WSCC is required on these matters. 	
2.4.70	<ul style="list-style-type: none"> As a general point, the use of temporary traffic lights at A-28 for the full 45 weeks should be re-assessed. The use of traffic lights for this period of time will have consequences for the programming of other temporary works in the vicinity. WSCC need to understand what other measures the Applicant may have considered leading to the traffic management scheme now proposed and whether the temporary traffic signals are required for the full 45 weeks. 	
2.4.71	<ul style="list-style-type: none"> When the traffic lights are in place, it is requested that movements requiring the traffic signals are limited to avoid the peak hours. The A280 performs an important part of the highway network linking the A27 to the A24, and as such is heavily trafficked and sensitive to potential delays caused by the proposed traffic signals. 	
2.4.72	<ul style="list-style-type: none"> The tracking drawing for the cable drum HGV indicates that the left turn movement from A28 Tolmare Farm is not achievable. Clarification is needed on whether any temporary works are proposed to enable these movements. 	
2.4.73	<p><i>A272/Kent Street</i></p> <ul style="list-style-type: none"> As noted above, there is the concern regarding the 40mph temporary speed limit and whether there will be compliance with this. If a temporary speed limit is necessary, this should be limited to around the area of works with there also being suitable warning signage. Having a more localised temporary speed limit around Kent Street and Oakendene (i.e. the area of works) will make it more obvious to drivers why a temporary limit is in place. The currently proposed temporary 40mph limit is considered too long by WSCC. 	<p>The Applicant can confirm that an updated version of the Construction Accesses A-26, A-28, A-61 and A-64 Traffic Management Strategies was included within Appendix D of the Outline Construction Traffic Management Plan [REP4-045]. This update covered WSCC comments 2.1.81 to 2.1.88. The Applicant notes that the ability to implement temporary speed limits is secured by Article 16 of the Draft Development Consent Order [REP4-004].</p>
2.4.74	<ul style="list-style-type: none"> Clarification is needed whether the A272 road widths on the tracking drawings are accurate. The drawings appear to show the A272 being quite wide. The actual lane widths appear to be no more than 3.5 metres in each direction. The A272 does widen in the vicinity of the Kent Street junction but only to accommodate a taper at the Picts Lane junction opposite. 	
2.4.75	<ul style="list-style-type: none"> The above point aside, the tracking for all HGVs turning left appears to indicate encroachment into the eastbound traffic lane. For the tipper HGVs, the tracking for a left turn out does not make use of the temporary widening, hence this movement may well be mitigated by changing the tracking. For the longer articulated HGVs, is there scope to introduce a corner taper to assist with left turning exiting vehicles? If these movements cannot 	

Ref	Deadline 4 submission	Applicant's response
	<p>be mitigated through changes to the design, further controls may be required to assist exiting vehicles (it is noted that banksmen are proposed presumably along with the use of stop/go boards). The larger cable drum HGVs should be timed to avoid peak hours.</p>	
2.4.76	<ul style="list-style-type: none"> As a point of principle, are HGVs anticipated to turn left (to the west) out of Kent Street onto the A272 and therefore towards Cowfold? It's accepted that the site compound at Oakendene is located to the west but unless the HGV is returning to the compound or has another local destination to the west, the HGV routing strategy otherwise would require vehicles to travel eastwards and thereby avoiding Cowfold. Further clarity is required on this matter. 	
2.4.77	<ul style="list-style-type: none"> It is noted that the proposed widening at A272/Kent Street will result in the loss of vegetation on the westside of the junction. Full consideration of this impact must be addressed through the relevant DCO documentation. See elsewhere in this response where concerns are raised. 	
2.4.78	<ul style="list-style-type: none"> In light of the Oakendene compound being used as a holding area for HGVs, tracking drawings are required to demonstrate the adequacies of the existing A272 junction. 	
2.4.79	<ul style="list-style-type: none"> The passing places are noted. The extent of public highway varies along Kent Street as such it's not a given that these are within the highway. The highway boundary would need to be determined and shown on the relevant drawing alongside the proposed passing places. Confirmation would be required the passing places are also within the DCO Limits. 	
2.4.80	<ul style="list-style-type: none"> Table 3-1 indicates 12 and 24 hour averages of the north and south bound flows rather than totals. The table should be revised to provide totals rather than averages. 	
<p>Outline Public Rights of Way Management Plan (REP3-034)</p>		
2.4.81	<p>3.21 At ISH 1, it was requested by both residents and WSCC that impact on PRow crossed by trenched cable crossing methods should be minimised. However this does not appear to have been considered further by the Applicant. One particular example is the crossing of BW1730, which is still proposed as a trenched crossing even though it will have a high impact on local connectivity due to the importance of this route to the surrounding PRow network. Whilst the Outline PRowMP does now consider that construction traffic will, where possible, give way to lawful public path users, it is not believed that these amendments go far enough to consider the impact on the severance the Project will bring and where small sections of PRow cause large scale disruption to users.</p>	<p>The Applicant notes that the impacts on users of Public Rights of Way (PRow) are assessed in Chapter 17: Socio-economics, Volume 2 of the Environmental Statement (ES) [APP-058]. The measures for each PRow have been outlined in the Access, Rights of Way and Streets Plan [APP-012] and the Outline Public Rights of Way Management Plan [REP3-033], secured by Requirement 20 in the Draft Development Consent Order [REP4-004].</p> <p>The Applicant is committed to minimising impacts on PRow and notes that closure and diversion is generally short term. The Applicant will provide further detail on the programme for temporary closure, diversion and reinstatement in accordance with Requirement 20 (1) (a) and (b) secured in the Draft Development Consent Order [REP4-004]. Closures will generally be for a few days at a time and alternative routes or diversions are available in the locality as described in the Outline Public Rights of Way Management Plan [REP3-033] with indicative PRow diversions shown in the Access, Rights of Way and Streets Plan [REP-APP012]. The Applicant considers this is a proportionate approach to the short term closures.</p> <p>The Applicant notes that with respect to Bridleway BW1730 specifically paragraph 5.5.9 (fifth bullet) within the Outline Public Rights of Way Management Plan [REP3-033] outlines that Bridleway (BW) 1730 will use a defined route approximately 100 metres around the affected area, therefore retaining connectivity to the surrounding PRow network. The Applicant will update the Access, Rights of Way and Streets Plans [APP-012] at Deadline 6 to include the indicative temporary diversion for BW 1730.</p>

Ref	Deadline 4 submission	Applicant's response
Response to Action Point 60 (Day 2, Agenda Item 98 – Onshore Archaeology)		
<p>2.4.82 <u>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 trial trenching</u></p> <p>3.22 At the ISH (Day 2, Agenda Item 98 – Onshore Archaeology), WSCC raised concerns that the amended Commitment 225 does not currently fully commit to delivery of engineering and design solutions for avoidance avoidance/preservation of significant archaeology. And thus avoidance of harm to nationally significant archaeology still cannot be guaranteed.</p>	<p>The Applicant acknowledges the comment from West Sussex County Council. Following the Issue Specific Hearing 2, the Applicant has continued to engage with West Sussex County Council to seek agreement on the wording of commitment C-225 and Requirement 19 of the Draft Development Consent Order [REP4-004]. An agreed for of wording of commitment C-225 has now been reached. Please refer to the Applicant's response at references 2.1.102. However, engagement with West Sussex County Council on the revised wording of Requirement 19 of the Draft Development Consent Order [REP4-004] is ongoing.</p>	
<p>2.4.83 3.23 WSCC's remaining concerns with Commitment 225 lie with the ambiguous wording relating to the delivery of design solutions, with the use of caveats such as, '<i>consideration will be made</i> for engineering solutions' and '<i>where</i> impacts are <i>not avoidable</i>, these will be minimised <i>where possible</i>'.</p>		
<p>2.4.84 3.24 The ExA asked WSCC to respond on whether removal of the ambiguous wording from Commitment C-225, and/or the changes to the wording of dDCO Requirement 19, would address these concerns.</p>		
<p>2.4.85 3.25 As per WSCC's Response to Examining Authority First Set of Written Questions (25 April 2024) (REP3-073), WSCC's Local Impact Report (REP1-054), Relevant Representation (RR-418) and other previous written submissions, WSCC's position remains that despite the suite of non-intrusive works undertaken, the Applicant is currently unable to fully and adequately describe the significance of the heritage assets affected by the Project, due to the lack of prior trial trench evaluation. It is therefore also not currently possible to be sure that the mitigation proposed by the Applicant will be suitable or feasible for any archaeological features identified post-consent during the field evaluation process, or that it will reduce the magnitude of harm to the degree modelled within the ES chapter (PEPD-021).</p>	<p>The Applicant responded at Deadline 2 to West Sussex County Council's concerns raised within their Local Impact Report in Deadline 2 Submission – 8.43 Category 8: Examination Documents – Applicant's Responses to West Sussex County Council Deadline 1 Submissions [REP2-020] and to West Sussex County Council's responses to the Examining Authority First Set of Written Questions at Deadline 4 in Table 2-1 within Deadline 4 Submission – 8.77 Applicant's Response to Stakeholder Replies to Examining Authority Written Questions [REP4-079]. Furthermore the Applicant provided a response to Action Point 59 from the Issue Specific Hearing 2 in Appendix B within Deadline 4 Submission – 8.70 Applicant's Response to Action Points Arising from Issue Specific Hearing 2 and Compulsory Acquisition Hearing 1 [REP4-074] which provides context to the Action Point by setting out the Applicant's approach to archaeological matters for Rampion 2; discusses the case of the solar farm and distinguishing Rampion 2; and provides a copy of the Low Carbon Solar Park 6 judgement.</p>	
<p>2.4.86 3.26 WSCC draws attention to the requirements of the relevant planning policies (NPS EN-1 for Energy (January 2024), paragraphs 5.9.8 to 5.9.12; National Planning Policy Framework paragraphs 200), which place a duty upon the Applicant to describe the significance of any heritage assets affected by the Project. WSCC also draws attention to the Low Carbon Solar Park 6 planning judgement highlighted within WSCC's Response to Examining Authority First Set of Written Questions (REP3-073), and upon which the Applicant has now been asked by the ExA to comment. This judgement enshrines the importance of field evaluation for understanding archaeological significance and mitigation, and thus ensuring decision makers have the information necessary to a conduct a proper balancing exercise.</p>	<p>It is the Applicant's position that sufficient information has been provided to support the assessment of effects presented in Chapter 25: Historic environment, Volume 2 of the Environmental Statement [REP4-024], based on a worst-case scenario, and also that mitigation by avoidance through design and preservation by record is secured through the commitment C-225, Requirement 19 of the Draft Development Consent Order [REP4-004] and Outline Onshore Written Scheme of Investigation [REP3-035]. However, in response to West Sussex County Council's concerns, the Applicant has amended the wording of commitment C-225, which West Sussex County Council have approved. Please also see the Applicant's responses at references 2.1.102. Engagement with West Sussex County Council on the revised wording of Schedule 1, Part 3, Requirement 19 of the Draft Development Consent Order [REP4-004] is ongoing.</p>	
<p>2.4.87 3.27 The refusal to grant planning permission was upheld and the challenge made on ground of procedural unfairness was rejected by the High Court, partly on the basis of insufficient archaeological field investigation.</p>		
<p>2.4.88 3.28 It is WSCC's position that field evaluation needs to be undertaken prior to a decision, to provide the necessary degree of understanding of significance, magnitude of harm and mitigation. In the absence of field evaluation, a firm commitment must be made by the Applicant to the avoidance of harm to significant archaeology by design or engineering solutions.</p>		

Ref	Deadline 4 submission	Applicant's response
2.4.89	3.29 In the absence of prior field evaluation, WSCC therefore would require the removal of the ambiguous wording from Commitment C-225, to ensure a watertight commitment to the delivery of engineering solutions (e.g. narrowing of the construction corridor, divert cable route within DCO Order Limits, re-siting stockpiles, additional trenchless crossings) to avoid impacts.	
2.4.90	3.30 Changes to the wording of dDCO Requirement 19 are also recommended to strengthen this commitment.	
2.4.91	3.31 It must be noted that this approach does not entirely remove the risk of harm to nationally significant archaeology. In the event that significant remains are identified that may not be suitable for preservation in situ (such as fragile or ephemeral features or extensive areas of lithic scatters), mitigation by excavation ('preservation by record') may be the only feasible solution. Therefore, even with changes to the wording of Commitment C-225, there remains a risk of major adverse effects to nationally significant archaeology.	
2.4.92	3.32 WSCC therefore requests: <ul style="list-style-type: none"> • Changes to wording of Commitment C-225 to remove ambiguity and commit to the delivery of engineering solutions for the avoidance of harm to significant archaeological features (where preservation in situ is demonstrated to be suitable mitigation for the archaeology in question). • Changes to dDCO Requirement 19 to commit to preservation in situ of significant archaeological remains, if the archaeology in question is suitable for this form of mitigation. 	
2.4.93	3.33 Suggested revisions to Commitments Register (REP3-049), Commitment C-225: <i>"Where previously unknown archaeological remains of high heritage significance are identified through surveys along the cable route, and where these locations have not been possible to avoid during earlier design stage, engineering and design solutions (e.g. narrowing of the construction corridor, divert cable route within DCO Order Limits, re-siting stockpiles, trenchless crossings) will be employed to avoid impacts. In the event of the discovery of archaeological remains of high heritage significance which are not suitable for preservation in situ on archaeological grounds, an appropriate programme of mitigation will be undertaken to ensure preservation by record. Such measures will be reviewed in consultation with relevant stakeholders (WSCC Archaeologist local planning authority and Historic England). An onshore outline WSI provides detail of appropriate methodologies to be implemented during the evaluation and mitigation stages of the archaeological works."</i>	<p>In response to West Sussex County Council's comments and proposed amendments to the wording of commitment C-225, the Applicant has made the following changes to the commitment to address West Sussex County Council's concerns (red and strikethrough text representing amendments made):</p> <p><i>"Where previously unknown archaeological remains which are demonstrably of high-national heritage significance are identified within the onshore Order limits, through surveys along the cable route, and where these locations have not been possible to avoid during earlier design stage, consideration will be made for engineering and design solutions (e.g. narrowing of the construction corridor, divert cable route within DCO Order Limits, re -siting stockpiles, trenchless crossings) will be employed, subject to agreement by the relevant planning authority in consultation with WSCC. to avoid impacts in the first instance. Where impacts are not avoidable, these will be minimised where possible through design solutions and In the event that archaeological remains of national significance are deemed not suitable for preservation in situ on archaeological grounds, or necessary consent is not granted, an appropriate programme of mitigation will be undertaken to ensure preservation by record. In the event of the discovery of archaeological remains of high heritage significance which are not suitable for preservation in situ on archaeological grounds, or cannot be avoided due to technical constraints, an appropriate programme of mitigation will be undertaken to ensure preservation by record in accordance with onshore outline WSI. Such All measures for mitigation and preservation in situ will be reviewed in consultation with relevant stakeholders (WSCC Archaeologist, local planning authority and Historic England). An</i></p>

Ref	Deadline 4 submission	Applicant's response
		<p><i>onshore outline WSI provides detail of appropriate methodologies to be implemented during the evaluation and mitigation stages of the archaeological works."</i></p> <p>The amended commitment C-225 has been updated in the Commitments Register [REP4-057] (updated at Deadline 5), Outline Code of Construction Practice [REP4-044] (updated at Deadline 5) and Outline Onshore Written Scheme of Investigation [REP3-035] (updated at Deadline 5).</p> <p>This revised commitment has been agreed as suitable by WSCC.</p>
2.4.94	<p>3.34 Suggested revisions to Schedule 1, Part 3, Requirement 19 (5) of the dDCO (REP2-002): <i>"In the event of the discovery of high significance archaeological remains within the onshore Order limits, their significance and suitability for preservation in situ must be assessed by field evaluation, in accordance with the outline onshore written scheme of investigation. Any suitable high significance archaeological remains will be preserved in situ. Should archaeological remains be left in situ on any site, a site-specific archaeological management plan must be submitted to and approved in writing by the relevant planning authority. Any further works, including removal and reinstatement, must be carried out in accordance with the approved site-specific archaeological management plan, unless otherwise approved by the relevant planning authority."</i></p>	<p>Engagement with West Sussex County Council on the revised wording of Schedule 1, Part 3, Requirement 19 of the Draft Development Consent Order [REP4-004] is ongoing.</p>
2.4.95	<p>3.35 In the absence of prior field evaluation, the above changes to Commitment C-225 and to dDCO Requirement 19 would largely satisfy WSCC's current concerns. However, WSCC remains sceptical that the Applicant is able to fully commit the required design and engineering solutions, especially in the event of the discovery of extensive significant archaeological remains in certain parts of the DCO Limits, where the working corridor may be narrower, and/or is already subject to numerous topographic and environmental constraints.</p>	<p>The Applicant welcomes West Sussex County Council's agreement of changes to the wording of commitment C-225 (Commitments Register [REP4-057]) and that these changes satisfy their concerns. Engagement with West Sussex County Council on the revised wording of Schedule 1, Part 3, Requirement 19 of the Draft Development Consent Order [REP4-004] is ongoing.</p>
<p>West Sussex to respond to the submitted Written Scheme of Investigation</p>		
2.4.96	<p>3.36 Please see below for WSCC's response to the OOWSI</p>	<p>Noted, please see the Applicant's response at references 2.1.108 to 2.1.141.</p>
<p>Outline Onshore Written Scheme of Investigation (REP3 - 035)</p>		
2.4.97	<p>3.37 In general, the updates to the Outline Onshore Written Scheme of Investigation (OOWSI) are welcomed by WSCC. The comments below should be read in conjunction with Table 1 which sets out suggested wording changes of additional to the text of the OOWSI.</p>	<p>The Applicant acknowledges and welcomes West Sussex County Council's comments on the updates to the Outline Onshore Written Scheme of Investigation [REP3-035].</p>
<p>Commitments and securing mechanisms</p>		
2.4.98	<p>3.38 The inclusion of specific references to the archaeological commitments (paragraph 1.2.3) and setting out how the OOWSI will deliver these, is welcomed. WSCC is satisfied that these commitments are thus secured.</p>	<p>The Applicant acknowledges and welcomes West Sussex County Council's comments on the updates to the commitments set out in the Outline Onshore Written Scheme of Investigation [REP3-035].</p>
2.4.99	<p>3.39 WSCC finds that Commitment C-225 does not provide sufficient guarantee that, in the event that high significance remains are identified, it will be possible to secure their preservation. The wording of the commitment remains somewhat vague, with phrases such as</p>	<p>Please refer to the Applicant's response provided at reference 2.1.102.</p>

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	'consideration will be made for engineering solutions' and 'where impacts are not avoidable' conveying a lack of certainty.	
2.4.100	3.40 By the nature of the process, mitigation by avoidance/design is contingent upon engineering constraints and will rely on the feasibility of any design solutions proposed by the Principal Contractor (paragraph 4.4.10). Please see above (Response to Action Point 60 (Day 2, Agenda Item 98 – Onshore Archaeology), and WSCC's response to the Applicant's Responses to Examining Authority's First Written Questions [REP3-051]) for further comments (Appendix B).	Noted, the Applicant has no further comments at this stage.
2.4.101	<p><u>Role of WSCC</u></p> <p>3.41 The amendments to the Archaeological Curators section (paragraphs. 1.3.9- 1.3.12) are noted. The wording now accurately reflects the revised post-consent role of WSCC, as necessitated by resource and time constraints given the scale of the Project. The wording is now in line with the requested changes to Schedule 1, Part 3, Requirement 19 of the Draft Development Consent Order (REP2-002).</p>	<p>The Applicant welcomes West Sussex County Council's comment that the wording in paragraphs 1.3.9 to 1.3.12 in the Outline Onshore Written Scheme of Investigation [REP3-035] now accurately reflects the revised post-consent role of West Sussex County Council and will be in line with the requested changes to Schedule 1, Part 3, Requirement 19 of the Draft Development Consent Order [REP4-004]. The Examining Authority has requested in the Examining Authority's schedule of proposed changes to the draft Development Consent Order (dDCO) [PD-013] that West Sussex County Council be included as a consultee on the stage specific Written Schemes of investigation (WSIs).</p>
2.4.102	3.42 As discussed with the Applicant, please amend the wording at paragraphs. 1.3.8 and 4.9.4 to indicate that WSCC will retain a specific and limited involvement in the Project post-consent, in relation to archaeological archives and public outreach only, as these matters will be best overseen at a county level.	<p>The Applicant confirms that this change has been incorporated into an updated revision of the Outline Onshore Written Scheme of Investigation [REP3-035] submitted at Deadline 5.</p>
2.4.103	<p><u>Sampling strategies</u></p> <p>3.43 The inclusion of an indicative range of trial trench sample size is welcomed. However, a 5% sample should be the baseline sampling strategy, and the starting point for the development of bespoke sampling strategies within the SSWSIs. Site-specific departures from this 5% sample, in either direction, will require clear justification and the agreement of the relevant planning authority. This is in line with the Sussex Archaeological Standards 2019 which state that 'as a 'rule of thumb' it will be expected that the trench sample size will be not less than 5% of the development site.' (Sussex Archaeological Standards 2019, p. 2). See Table 1 for suggested wording.</p>	<p>The Applicant confirms that this change has been incorporated into an updated revision of the Outline Onshore Written Scheme of Investigation [REP3-035] submitted at Deadline 5.</p>
2.4.104	3.44 Trench sample size could be lowered to as little as 2% in areas where low archaeological potential can be predicted with high levels of confidence on the basis of, for e.g., known prior disturbance, historic land use and negative results of non-intrusive surveys. Trench sample size could increase to up to 10% in areas where high archaeological potential can be predicted with high levels of confidence on the basis of, for example, the recorded archaeological or historic environment context and the results of non-intrusive surveys.	<p>The Applicant confirms that this change has been reflected in an updated revision of the Outline Onshore Written Scheme of Investigation [REP3-035] submitted at Deadline 5.</p> <p>The Applicant notes that the sampling levels should be proportionate and no more than is necessary to inform the detailed design and mitigation measures set out in the Outline Onshore Written Scheme of Investigation [REP3-035]. In this regard, an excessive sample size may be undesirable as it may result in additional disturbance to remains which may otherwise be preserved in-situ or which would compromise the effectiveness of an archaeological recording exercise which may follow. In this context, it is noted that 10% is a very high sample size compared to normal practice.</p>
2.4.105	3.45 The provision of a contingency sampling percentage is welcomed. The wording should specify provision of a contingency in the event that initial trial trenching results indicate poor correlation between geophysical survey results and identified archaeological features. Particularly where trenching identifies archaeological features not picked up by the	<p>The Applicant considers that the wording at paragraph 4.5.7 of the Outline Onshore Written Scheme of Investigation [REP3-035] is proportionate and appropriate. Detail on the provision of contingency in trenching would be set out in Site Specific Written Schemes of Investigation, though it is anticipated that adopting a baseline 5% sampling strategy as requested by West</p>

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	geophysical survey. As this would indicate that geophysical survey cannot be relied upon in this specific area as an accurate predictor of archaeological potential, and thus additional evaluation may be required.	Sussex County Council at reference 2.1.115 would mean that a contingency would not normally be required in this sort of instance, except where required to obtain information specifically required to inform the detailed design and mitigation measures set out in the Outline Onshore Written Scheme of Investigation [REP3-035] .
2.4.106	<u>Other amendments</u> 3.46 WSCC is pleased to see a number of updates to the OOWSI which include the inclusion of the latest geophysical survey results and the addition of Palaeolithic research aims.	The Applicant notes West Sussex County Council's welcoming of updates made to the Outline Onshore Written Scheme of Investigation [REP3-035] which include the inclusion of the latest geophysical survey results and the addition of Palaeolithic research aims.
2.4.107	3.47 Clarification that the precise impacts and depths of individual trenchless crossings will be confirmed at the detailed design stage is welcomed.	The Applicant notes West Sussex County Council's welcoming of the clarification that the precise impacts and depths of individual trenchless crossings will be confirmed at the detailed design stage.
2.4.108	3.48 Amendments to the wording of mitigation methodologies, including investigation of dry valley deposits, is welcomed.	The Applicant notes West Sussex County Council's welcoming of the amendments made to the wording of mitigation methodologies, including investigation of dry valley deposits within the updated Outline Onshore Written Scheme of Investigation [REP3-035] .
2.4.109	3.49 The selective 100% sampling of certain features during evaluation stage (paragraph 6.21) is welcomed.	The Applicant notes West Sussex County Council's welcoming of the additional wording added to paragraph 6.21 within the Outline Onshore Written Scheme of Investigation [REP3-035] .
2.4.110	<u>Avoidance</u> 3.50 The addition of the section on Avoidance (paragraphs 4.4.8 – 4.4.12 and Appendix B, Protocol for the discovery of archaeological remains) is welcomed. It makes the process for assessing the significance of identified remains, and identifying the need for preservation in situ of high significance remains, much clearer. The graphic in Appendix B (page B2) depicts this process in a clear and concise manner.	The Applicant notes West Sussex County Council's welcoming of updates made to the Outline Onshore Written Scheme of Investigation [REP3-035] which include: <ul style="list-style-type: none"> the addition of the section on Avoidance (paragraphs 4.4.8 to 4.4.12); Protocol for the discovery of archaeological remains (Appendix B); and the graphic in Appendix B (page B2) depicting this process in a clear and concise manner.
2.4.111	3.51 Commitment to the active early consideration of the avoidance pathways from evaluation stage is a positive measure.	The Applicant notes West Sussex County Council's comment that the commitment to the active early consideration of the avoidance pathways from evaluation stage is a positive measure.
2.4.112	3.52 The protocol still does not provide a guarantee that in the event that high significance remains are identified, it will be possible to secure their preservation.	Please refer to the Applicant's response at reference 2.1.102 .
2.4.113	3.53 By the nature of the process, this solution is contingent upon engineering constraints and will rely on the feasibility of design solutions proposed by the Principal Contractor (para. 4.4.10). These will also be contingent upon archaeological factors (including the location, type, extent, depth etc of any such archaeological remains). As there has not yet been field evaluation, these factors remain unknown.	The Applicant notes West Sussex County Council's welcoming of the addition of Appendix B (protocol for the discovery of archaeological remains) within the Outline Onshore Written Scheme of Investigation [REP3-035] and the additional assurance it provides in terms of methodological processes for significant remains, and in ensuring chosen mitigation pathways will be proportionate and appropriate to the significance of the assets in question.
2.4.114	3.54 WSCC therefore welcomes the protocol and the additional assurance it provides in terms of methodological processes for significant remains, and in ensuring chosen mitigation pathways will be proportionate and appropriate to the significance of the assets in question. But WSCC considers that the preservation in situ of high significance archaeological remains can still not be assured due to the reliance on many unknown variables.	
2.4.115	<u>Archives</u> 3.55 Paragraph 4.9.2: the addition of this commitment is very much welcomed by WSCC. It will help ensure that the archaeological archiving obligations of the Project can be met and	The Applicant notes West Sussex County Council's welcoming of the addition within the Outline Onshore Written Scheme of Investigation [REP3-035] to provide for additional archiving capacity to meet the needs of the project, where this is necessary. The Applicant

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	<p>appropriate archive provision for the Project archive can be delivered. However, as discussed at the meeting with the Applicant on 10th May 2024, further details should be provided within this section in order to secure the delivery of archaeological archive requirements for the Project, including proposals to increase archives capacity and provision at Worthing Museum. Given the potential scope and scale of discoveries, this is in part to reduce the impact of the Project on the collecting infrastructure of the recognised archive repository, which operates as a charity.</p>	<p>also notes that in the meeting with West Sussex County Council on 10 May 2024 it was agreed that the detail of the archiving requirements would be dependent on the quantity and nature of material recovered during the archaeological investigations, which cannot be known at this stage.</p>
2.4.116	<p>3.56 Therefore, requested amendments to the OOWSI (see Table 1 for suggested wording) are;</p> <ul style="list-style-type: none"> • Specific reference to provision of additional shelving for the receiving museum; • Specific reference to the provision of a Project-specific archives documentation officer for the receiving museum; and • Commitment to ringfenced budget for archaeological archive deposition fees. 	<p>The Applicant confirms that these changes have been incorporated in an updated revision of the Outline Onshore Written Scheme of Investigation [REP3-035] submitted at Deadline 5.</p> <p>The level of any support for archiving will need to be proportionate to the quantity and nature of material recovered during the archaeological investigations, which cannot be known at this stage.</p>
2.4.117	<p>Education and Outreach 3.57 Minor amendments to Section 7 are required to ensure that the scope of the public outreach and education programme set out at a high level within the OOWSI is in proportion to the scale of the Project and the anticipated degree of public interest. See Table 1 for suggested wording.</p>	<p>The Applicant confirms that this change has been reflected in an updated revision of the Outline Onshore Written Scheme of Investigation [REP3-035] submitted at Deadline 5.</p>
2.4.118	<p><u>Treasure acquisition budget</u> 3.58 As per WSCC's previous responses, OOWSI should be amended to include a protocol or provision in the event of the discovery of archaeological finds which fall under the Treasure Act 1996. See Table 1 for suggested wording.</p>	<p>Please refer to the Applicant's response provided at references 2.1.132 and 2.1.133.</p>
2.4.119	<p>3.59 Every effort should be made to ensure that any treasure is donated to or acquired by the relevant museum and does not end up in private ownership. This would ensure that treasure objects are held in a recognised public repository and be made available for ongoing exhibition and research as part of the wider project archive. This in turn will contribute to fulfilment of the Project's outreach and education obligations.</p>	
2.4.120	<p>3.60 In the first instance, the Applicant should make every effort to encourage the donation of the treasure by the finders/landowner to the appropriate museum.</p>	<p>The Applicant confirms that this change has been reflected in an updated revision of the Outline Onshore Written Scheme of Investigation [REP3-035] submitted at Deadline 5.</p>
2.4.121	<p>3.61 In the event that donation cannot be facilitated, where possible the Applicant should provide a budget for, or contribute towards, the acquisition of Treasure items by the appropriate museum. This will remove or ease a burden on the museum to fundraise for the purchase of treasure items, given their status as a charitable trust.</p>	<p>The comment from West Sussex County Council is noted however the Applicant is not able to make an unspecified funding commitment of this type.</p>
2.4.122	<p>3.62 The amount a museum must fundraise in order to acquire an object valued as Treasure will be equivalent to the value of the reward for finders/landowners, as determined by the Treasure Valuation Committee.</p>	<p>Noted, the Applicant has no further comments at this stage.</p>
2.4.123	<p><u>Additional archaeological surveys</u> 3.63 The Project has predicted major adverse residual effects on multiple archaeological elements of a nationally significant and highly sensitive Neolithic and prehistoric landscape.</p>	<p>The assessment presented in Chapter 25: Historic environment, Volume 2 of the Environmental Statement (ES) [REP4-024] is based on a worst-case scenario. Whilst the available evidence, including archaeological geophysical survey, did not identify the presence of extensive complex remains which might indicate Neolithic flint mining, a precautionary approach has been taken, which includes the assumption of as yet unrecorded highly sensitive</p>

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		<p>Neolithic remains on a section of the onshore cable corridor which crosses the South Downs, the loss or disturbance of which is assessed as a major adverse (significant) effect.</p> <p>Commitments C-225 and C-79 in the Commitments Register [REP4-057] (updated at the Deadline 5 submission) provide for mitigation through design and archaeological recording. This will be secured through the Outline Onshore Written Scheme of Investigation [REP3-035] submitted at Deadline 5, which also sets out the methodological approach for archaeological investigations which ensures further investigation will be undertaken prior to construction. The Outline Onshore Written Scheme of Investigation [REP3-035] (provided at Deadline 5) is secured by Requirement 19 of the Draft Development Consent Order [REP4-004]. Engagement with West Sussex County Council on the revised wording of Schedule 1, Part 3, Requirement 19 of the Draft Development Consent Order [REP4-004] is ongoing. The wording of commitment C-225 were reviewed and updated in agreement with West Sussex County Council at Deadline 5.</p> <p>While residual significant adverse effects have been identified in Chapter 25: Historic environment, Volume 2 of the ES [REP4-024], given the magnitude of change and the potential for recording, this is considered to comprise less than substantial harm.</p> <p>The Planning Statement [APP-036] outlines the position with regards the planning balance with regard to the benefits of the Proposed Development and the harm to heritage assets that is identified in Chapter 25: Historic environment, Volume 2 of the ES [REP4-024], as per paragraphs 4.7.66 and 5.4.10 of the Planning Statement [APP-036].</p> <p>The Planning Statement [APP-036] states “<i>It is considered that the substantial public benefits of the Proposed Development outweigh the residual harm to the heritage assets outlined in the ES.</i>”</p>
2.4.124	3.64 Due to the highest sensitivity of the landscape and archaeological features in question, industry-standard mitigation practices may not be sufficient to mitigate the harm, even given the non-standard evaluation methodologies proposed for this area within the OOWSI (OOWSI Figure 4: Potential areas of fieldwalking and test pitting).	The Applicant considers that the comprehensive measures for further survey and the mitigation responses set out within the Outline Onshore Written Scheme of Investigation [REP3-035] (updated at Deadline 5) are appropriate and proportionate mitigation for the potential for harm.
2.4.125	3.65 Additional non-intrusive (geophysical) surveys outside of the immediate footprint of construction impacts should therefore also be considered, in order to enhance the understanding and knowledge of this landscape and balance the anticipated harm to the historic environment with wider opportunities to enhance understanding of this nationally significant South Downs prehistoric mining landscape. Such surveys would also contribute towards public benefit outcomes by advancing collective understanding of these nationally significant early Neolithic monuments and of prehistoric industrial activity and processes.	The completion of surveys outside of the proposed DCO Order Limits would not directly mitigate any known or potential effects of the Proposed Development. In addition, any such surveys would be dependent on landowner permission and so the Applicant is not able to make a commitment to undertake these. Similarly, the completion of non-intrusive surveys within scheduled areas as suggested at reference 2.1.139 would require permission from Historic England. It is not suggested that such permission would be unreasonably withheld but the Applicant is not able to make a commitment dependent on third party permissions.
2.4.126	3.66 Surveys should be considered both within and outside the Order Limits, potentially focussing on the nationally significant but relatively poorly understood/sparsely investigated scheduled Neolithic flint mining sites at Harrow Hill or Blackpatch.	
2.4.127	3.67 WSCC suggests geophysical magnetometry survey of the chosen monument/s, followed by additional detailed/targeted Ground Penetrating Radar (GPR) survey, focussing on smaller, defined areas of interest.	Please refer to the Applicant's responses provided at references 2.1.136, 2.1.137 and 2.1.138 .

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2.4.128	3.68 The OOWSI should be amended to include provision for additional non-intrusive archaeological surveys where appropriate. See Table 1 for suggested wording.	Please refer to the Applicant's responses provided at references 2.1.136, 2.1.137 and 2.1.138.
2.4.129	Table 1: Detailed comments on OOWSI (requested changes are in green)	
	Para	Suggested Amendment
	1.3.8	The curatorial responsibility for the onshore historic environment of Rampion 2 post-consent resides with the relevant local planning authority for each stage of scheme, in this case the district councils and SDNPA as listed in paragraph 1.2.8. The agreement of this Outline Onshore WSI, archaeological archives and public outreach activities is with the WSCC Archaeologist, with advice sought from Historic England (South East Regional Advisor and Science Advisor) and SDNPA.
	4.5.7	The areas within the DCO Limits which will potentially be subject to evaluation trenching are shown in Figure 3: Potential areas of proposed archaeological trial trenching. Within these areas, the detailed location and extent of evaluation trenching will be proportionate to the potential and significance of the archaeological interests and will be determined on the basis of desk study and survey information and in consultation with the Archaeological Curator(s). It is anticipated that areas identified for evaluation trenching will be subject to a 2% to 5% trench sample size. This will be confirmed in the SSWSIs. Trench sample size may reduce to a minimum of 2% in areas where low archaeological potential and/or known prior ground disturbance can be clearly demonstrated. Trench sample size may increase to a maximum of 10% in areas where high archaeological potential or significance is predicted. The SSWSIs which will also include any provision for a contingency to increase trenching where necessary to sufficiently characterise archaeological remains, or in the event that initial trial trenching results indicate poor correlation between geophysical survey results and identified archaeological features in that area.
	4.9.2	The Archaeological Contractor will specify the receiving museum, and confirm that arrangements for receipt of archaeological material, and project archives, have been agreed before the commencement of fieldwork. This will include identification of existing capacity for storage of archaeological material at the receiving museum and any arrangements required to be made between the Applicant and the receiving museum to expand that capacity to accommodate finds arising in connection with the authorised project including any necessary contributions from the Applicant towards the same. Given the scale of the project and anticipated size of the archaeological archive, it is anticipated that contributions from the Applicant may be required by the receiving museum towards: <ul style="list-style-type: none"> Shelving units in order to ensure physical storage capacity can meet the anticipated requirements of the Project; and A designated documentation officer, to ensure sufficient staff capacity to document the Project archive. Funds for the archaeological archive deposition fees will be ringfenced to ensure archiving obligations can be fulfilled.

Ref	Deadline 4 submission	Applicant's response
4.9.4	The WSCC Archaeologist and the relevant local authority archaeological curators will require confirmation that the archive has been submitted in accordance with the SSWSI.	
7.1.2	A proportionate programme of outreach activities, commensurate to the findings of the archaeological mitigation works, will be provided by RED. The scope of these works will be developed in conjunction with the WSCC archaeologist and the relevant local authority archaeological curators, and will be defined in a method statement, provided to the relevant consultees for their agreement, in advance of the commencement of the archaeological mitigation works.	
7.1.3	The following activities are provisionally suggested as appropriate, proportionate and deliverable methods of providing public outreach: <ul style="list-style-type: none"> • Reporting important discoveries via available social media and/or other channels to a range of audiences; • Plan promoting specific engagement events (e.g., talks, open days etc) at an appropriate phase via available social media and/or other channels; 	
New text addition to 4.7.10	<p>Treasure acquisition budget</p> <p>In the event of the discovery of archaeological finds which fall under the Treasure Act 1996, every effort should be made to ensure that treasure is donated to or acquired by the relevant museum and are thus made available for ongoing exhibition and research as part of the wider project archive. In the first instance, the Applicant will make every effort to encourage and facilitate the donation of treasure items by the finders/landowner to the appropriate museum. In the event that donation cannot be facilitated, where possible the Applicant will provide a budget for, or contribute towards, the acquisition of Treasure items by the appropriate museum.</p>	
New text addition to Section 4.4: Overview of evaluation and mitigation strategy	<p>Additional archaeological surveys</p> <p>Dependent upon the results of the evaluation phase, including the non-standard evaluation methods, additional non-intrusive surveys outside of the immediate footprint of construction impacts may be required. The aim of the additional surveys will be to enhance understanding and knowledge of the nationally significant South Downs prehistoric mining landscape. Surveys should be considered both within and outside the Order Limits, potentially focussing on enhancing knowledge of the relatively poorly understood and sparsely investigated scheduled Neolithic flint mining sites at Harrow Hill or Blackpatch.</p> <p>Additional surveys might comprise geophysical magnetometry survey of the chosen monument/s, followed by additional detailed/targeted Ground Penetrating Radar (GPR) survey, focussing on smaller, defined areas of interest, as appropriate. The need for, feasibility, location, extent and methodology of any additional non-intrusive surveys will be agreed with the Archaeological Curators, and will be set out within the SSWSIs.</p>	

Outline Landscape and Ecology Management Plan, Rev B (OLEMP) (REP3-037)

Ref	Deadline 4 submission	Applicant's response
2.4.130	<ul style="list-style-type: none"> Changes are welcomed to paragraph 1.2.6 which now requires accordance of the replacement planting strategy identified within the Arboricultural Impact Assessment (AIA) (APP-194). This statement is subject to the removal of the following proposed planting species from the revised AIA proposed for submission in Deadline 5: Quercus cerris – Turkey Oak, Quercus ilex – Holm Oak and Quercus x turneri ‘Pseudoturneri’ – Turners Oak. 	<p>The Applicant notes West Sussex County Council's welcoming of amendments made to paragraph 1.2.6 within the Outline Landscape and Ecology Management Plan [REP4-047] (updated at Deadline 5) which now requires accordance of the replacement planting strategy identified within the Arboricultural Impact Assessment.</p> <p>The Applicant notes that the species referred to were removed in the updated version of Appendix 22.16: Arboricultural Impact Assessment, Volume 4 of the Environmental Statement [REP4-037] submitted at Deadline 4.</p>
2.4.131	<ul style="list-style-type: none"> With regard to Section 2.2 of the OLEMP and the updated Oakendene Substation Indicative Landscape Plan, comments made in Section 3.7 of this response are relevant. Updates on phasing and potential for advanced planting are welcomed, though paragraph 2.2.1 regarding Kent Street is of concern for reasonings stated with regard to the DAS. 	<p>The comments made by West Sussex County Council regarding paragraph 2.2.1 are understood to be related to the following text from the Outline Landscape and Ecology Management Plan [REP4-047].</p> <p><i>“Kent Street: Existing mature trees and hedges along this wooded road corridor will be retained and strengthened with additional native woodland planting alongside the substation provided to ensure limited views of the substation even in winter. The wooded, rural character of Kent Street will be retained.”</i></p> <p>The Applicant notes the references in Section 3.7 address losses at accesses during construction. As per paragraph 4.10.1 of the Outline Code of Construction Practice [REP4-043], accesses including those on Kent Street would be reinstated along with the planned passing places for the construction phase. The Applicant has amended paragraph 2.2.1 to reflect this and provided further clarity with regards to reinstatement at all construction access locations in Section 1.2 the Outline Landscape and Ecology Management Plan [REP4-047] at Deadline 5.</p> <p>In combination with the additional planting, the rural character of Kent Street would be retained in the operation and maintenance phase.</p>
2.4.132	<ul style="list-style-type: none"> Paragraph 2.5.2 “All existing vegetation (trees and hedgerows) within the Oakendene West Construction Compound will be retained”. As a result of revised VRPs, hedgerow loss will occur with the potential for tree loss to occur at all construction compounds within the vicinity of the Oakendene substation area. WSCC believes this statement to be incorrect or misleading and must be revisited by the Applicant. 	<p>The Applicant notes a minor amendment (noting temporary loss at the access point) to paragraph 2.5.2 in the Outline Landscape and Ecology Management Plan [REP4-047] submitted at Deadline 5.</p>
2.4.133	<ul style="list-style-type: none"> Whilst changes are welcomed to paragraph 2.6.7 regarding the use of nonnative tree species outlined within the AIA, the wording used promotes ambiguity as to the strategy for proposed tree planting selection. 	<p>The Applicant notes that a minor amendment to paragraph 2.7.7 has been made in the Outline Landscape and Ecology Management Plan [REP4-047] published at Deadline 5.</p>
2.4.134	<ul style="list-style-type: none"> Paragraph 4.5.2 notes a significant uplift in the number of hedgerows and treelines affected which is cause for some concern. It is requested that the relevant ES assessments will also be reviewed as appropriate. 	<p>Please see above response at reference 2.1.26.</p>
2.4.135	<ul style="list-style-type: none"> Paragraph 4.5.4 states “Landscape plans for hedgerow and treeline reinstatement may need to be produced in sensitive areas such as the SDNP and included within the stage specific LEMP”, suggesting that stage specific LEMPs may not need to produce plans for hedgerow and treeline reinstatement, and if so, only in undefined “sensitive areas”. This is very concerning and contrary to what is suggested in Section 2.6 regarding stage specific LEMPs. 	<p>The Applicant notes that this sentence has been removed from the version of the Outline Landscape and Ecology Management Plan [REP4-047] submitted at Deadline 5.</p>

Ref	Deadline 4 submission	Applicant's response
2.4.136	<ul style="list-style-type: none"> Section 4.9 again provides confidence that the planting strategy within the AIA has been considered with regard to proposed planting numbers. Further recognition of the 'Mitigation Principles' within the AIA should also be included to ensure that replacement trees consider the quality and value of trees proposed for removal and indicatively shown within the AIA. 	<p>The Outline Landscape and Ecology Management Plan [REP4-047] cross references Appendix 22.16: Arboricultural Impact Assessment, Volume 4 of the Environmental Statement [REP4-037] in paragraph 1.2.6 showing that these documents are designed to work in tandem. The mitigation principles have also been duplicated in the Outline Landscape and Ecology Management Plan [REP4-047] submitted at Deadline 5.</p>
2.4.137	<ul style="list-style-type: none"> Amendments to Section 5 (Monitoring and Management and Adaptive Management) are generally welcomed and provide further clarity for some concerns previously raised by WSCC. It would be helpful to distinguish between routine inspections to ensure that maintenance tasks, such as watering and weeding, are being undertaken as programmed and to record any remedial works required, and ecological monitoring of habitats to ensure that they achieve the specified target condition. The latter, for example, might involve detailed National Vegetation Classification (NVC) surveys or other condition assessment to assess whether areas of reinstated semi-improved grassland, and coastal and floodplain grazing marsh have achieved their specified target condition. It is requested that this chapter includes separate sections on routine maintenance operations (such as watering and weeding), adaptive management, remedial works (such as re-seeding and replacement planting), routine maintenance inspections (including the recording of any remedial works required), ecological monitoring of habitats (including methods and frequency of visits) and reporting mechanisms (including methods and frequency).] 	<p>The Applicant notes West Sussex County Council's welcoming of amendments made to Section 5 (Monitoring and Management and Adaptive Management) within the Outline Landscape and Ecology Management Plan [REP4-047] (updated at Deadline 5).</p> <p>The Applicant has updated the Outline Landscape and Ecology Management Plan [REP4-047] at Deadline 5 to clearly define monitoring visits to identify ongoing management needs, and those to be undertaken to monitor progress towards target condition and to inform any changes to the overall management plan.</p>
2.4.138	<ul style="list-style-type: none"> Section 5 should include further details for translocated notched hedgerows as mentioned above. 	<p>The Applicant notes that paragraph 5.1.4 has been updated to acknowledge translocated vegetation in the Outline Landscape and Ecology Management Plan [REP4-047] submitted at Deadline 5.</p>
2.4.139	<ul style="list-style-type: none"> WSCC has concerns that monitoring, management and remedial actions may suffer a break or decline when they are handed over to an OFTO. There were major problems when this happened with the Rampion 1 OWF. Thus, WSCC request that the OLEMP includes handover arrangements to an OFTO for monitoring, management and remedial actions. WSCC had requested this in the WSCC LIR, Sections 11.42 and 11.54 (REP1-054). 	<p>The Applicant confirms that handover arrangements to an OFTO for monitoring, management and remedial actions have been included (see paragraphs 5.1.9 and 5.1.10) within the Outline Landscape and Ecology Management Plan [REP4-047] updated provided at Deadline 4).</p>
2.4.140	<ul style="list-style-type: none"> WSCC continue to request that the OLEMP contains a provision for the production of a protocol/procedure which identifies how maintenance, monitoring and management will be reported and submitted to the relevant planning authority, in order to ensure robust monitoring can be undertaken. This should be made and approved in writing by the relevant planning authority. 	<p>The Applicant notes that this information was added to the Outline Landscape and Ecology Management Plan [REP4-047] submitted at Deadline 4 (see paragraphs 5.1.6) and further updated at Deadline 5.</p>
2.4.141	<ul style="list-style-type: none"> Lessons learnt from Rampion 1 OWF identified that such a procedure was necessary due to the scale of landscaping and habitat restoration. This also came at a significant costing to the relevant planning authority for the project (WSCC) though this was funded through a Section 106 agreement. It is advised that funding for the relevant planning authorities is provided so that adequate resourcing is available to ensure monitoring of Rampion 2 can be achieved, given the Projects increased magnitude compared with Rampion 1 OWF. 	<p>With regards to cost recovery Rampion 2 recognises the concerns raised by West Sussex County Council in this regard. This matter has to be dealt with outside of the planning process as it is not a matter which is relevant to the application or whether consent should be granted. Notwithstanding that Rampion 2 acknowledges the concerns of West Sussex County Council and its ability to recover costs incurred during the Requirement discharge phase of the project should consent be granted. The Applicant can confirm that as previously advised Rampion 2 will pay the standard discharge fees in accordance with Schedule 14 to cover discharge of Requirements and the project is willing to enter into discussions on the provision of a PPA to facilitate provision of enhanced services for this phase of the project.</p>

Ref	Deadline 4 submission	Applicant's response
2.4.142	<ul style="list-style-type: none"> WSCC remain concerned with the lack of detail for the implementation, maintenance and aftercare of notched hedgerows which may potentially be translocated using a tree spade (as identified within 5.6.39 and 5.6.40 of the OCoCP). Whilst the mitigating measure is supported by WSCC, without the provision of an outline methodology and practices to be adopted within detailed LEMPs, WSCC are not satisfied that this technique could lead to successful translocated hedgerows. Outline methodology and practices should be inclusive of translocation operations, care and protection whilst within receptor pits, as well as adequate aftercare following final translocation. It also needs to provide confidence this would be possible within areas which are difficult to access for 10 years of maintenance, especially once fields/land is back in usual operational use of the landowner or tenant. 	<p>Additional information has been added to Section 5 of the Outline Landscape and Ecology Management Plan [REP4-047] submitted at Deadline 5. The Applicant notes that a detailed methodology for the translocation and replacement of hedgerows will be delivered during the detailed design phase via a specialist contractor. Management to ensure establishment would be undertaken pursuant to the stage specific Landscape and Ecology Management Plan secured by Requirement 12 of the Draft Development Consent Order [REP4-004] for the 10 year period - including for difficult to access locations.</p> <p>This would be discussed and agreed with the relevant local planning authority (in consultation with Natural England) through the discharge of Requirement 22 of the Draft Development Consent Order [REP4-004].</p>
2.4.143	<ul style="list-style-type: none"> WSCC continue to request the provision of a tabular schedule of the vegetation removal plans within the stage-specific LEMPs. It is of particular importance to understand which hedgerows will be proposed for notching through translocation, which is currently proposed to be determined during detailed design. 	<p>Hedgerows suitable for translocation would be identified at detailed design phase through a specialist contractor with experience to ensure the best possible outcome. As the assessment within Chapter 22: Terrestrial ecology and nature conservation, Volume 2 of the Environmental Statement [REP4-022] is based on the worst case of removal and replacement with new planting, the Applicant is content that the current position is the most reasonable. Additional detail would be sought to inform the identification of suitable hedgerows for translocation including soil type, health of the individual section identified at detailed design for removal and size (and therefore appropriate equipment). The Outline Vegetation Retention and Removal Plan (Document reference: 8.87) will be submitted on a stage specific basis and will also provide the information required on a tabulated basis (secured via Requirement 40 of the Draft Development Consent Order [REP4-004]).</p>
2.4.144	<ul style="list-style-type: none"> WSCC still have concerns over how quickly reinstatement will be possible given the exclusion of accesses, haul roads and construction compounds from Commitment C-103 (and based on WSCC experience of Rampion 1 OWF where the large areas of reinstatement were only possible upon full completion of construction activities). 	<p>The Applicant notes the comment but is committed to reinstatement as soon as possible. This will be in part driven by commitment C-292 (Commitments Register [REP4-057]) and the mechanisms for delivering BNG in Appendix 22.15: Biodiversity Net Gain Information, Volume 4 of the Environmental Statement [REP3-019]. All new planting will be maintained for 10 years after completion of planting for the relevant stage specific Landscape and Ecology Management Plan. This is secured through Requirements 12 and 13 of the Draft Development Consent Order [REP4-004].</p>
Commitments Register, Rev C (REP3-049)		
2.4.145	<ul style="list-style-type: none"> Commitment C-19 – There is nothing in the Outline Onshore Construction Method Statement, Section 3, that shows any indication that details of phasing and/or sections, nor reinstatement as soon as practicable. WSCC still have no clarity what a submission under Requirement 10 is likely to look like and how much detail it will provide on construction/restoration phasing within each stage. 	<p>The Applicant has provided a response to the comment from West Sussex County Council with respect to commitment C-19 within the Applicant's Responses to Examining Authority's Second Written Questions (ExQ2) (Document Reference: 8.81) question CR 2.1.</p>
2.4.146	<ul style="list-style-type: none"> Changes to Commitment C-216 are welcomed and provide more comfort in mitigating impacts on ancient woodland with regard to trenchless crossings. 	<p>The Applicant acknowledges West Sussex County Council's welcoming of the changes made to commitment C-216 (Commitments Register [REP4-057]).</p>
2.4.147	<ul style="list-style-type: none"> WSCC request that Commitment C-5 also mentions the HDD crossings for environmental reasons, such as Climping Beach, Sullington Hill and the ancient woodland sites. 	<p>The Applicant has provided a response to the comment from West Sussex County Council with respect to commitment C-5 within the Applicant's Responses to Examining Authority's Second Written Questions (ExQ2) (Document Reference: 8.81) question CR 2.1.</p>

Ref	Deadline 4 submission	Applicant's response
2.4.148	<ul style="list-style-type: none"> New Commitment C-292 is welcomed, ensuring that the mitigation hierarchy is applied at detailed design, and that the Ecological Clerk of Works is involved in providing advice to the design engineers at each crossing of sensitive habitats. 	<p>The Applicant acknowledges West Sussex County Council's welcoming of new commitments C-292 and C-294 (Commitments Register [REP4-057]).</p>
2.4.149	<ul style="list-style-type: none"> New Commitment C-294, relating to habitat surveys to inform the detailed design process and BNG calculations, is also welcomed. 	
Outline Noise and Vibration Management Plan (REP3-054)		
2.4.150	<p>3.69 In general terms the Outline Noise and Vibration Management Plan (ONVMP) is welcomed. Some additional comments are as follows:</p>	<p>The Applicant acknowledges West Sussex County Council's welcoming of the Outline Noise and Vibration Management Plan [REP3-054] submitted at Deadline 3. The Applicant has provided responses to West Sussex County Council's additional comments below (references 2.1.166 to 2.1.171).</p>
2.4.151	<ul style="list-style-type: none"> 3.2.5 – This should also specify consideration will be given to any phasing and duration of activities relative to identified receptors. 	<p>The Applicant notes that the Outline Noise and Vibration Management Plan [REP3-054] has been updated at Deadline 5 (paragraphs 3.8.1 to 3.8.3) to include the following:</p> <p><i>“Following detailed design, all predictions of noise and where required, vibration levels, will be reviewed at all representative sensitive receptors.</i></p> <p><i>Calculations will follow the methodology in BS 5228-1:2009+A1:2014 for noise and BS 5228-2:2009+A1:2014 for vibration (British Standard Institute, 2014a; 2014b). This will consider stages and duration of works, and will consider any cumulative effect with nearby works.</i></p> <p><i>Any changes to mitigation required to minimise noise and vibration during the works will be identified and included in the stage specific NVMP. The requirement for noise and vibration monitoring during for each stage will be agreed with the relevant planning authority and provided in the stage specific NVMP including details of duration of monitoring, measurement locations relative to each work site, suitable trigger levels and actions, form and frequency of reporting.”</i></p>
2.4.152	<ul style="list-style-type: none"> 3.3 Working Hours - WSCC consider that shoulder hours for deliveries in some sensitive locations may not be appropriate (e.g. where there are sensitive receptors proximate that could be affected by HGV noise and reversing alarms) 	<p>The provision of stage specific Noise and Vibration Management Plans is secured through Requirement 22 of the Draft Development Consent Order [REP4-004].</p> <p>The requirement for deliveries during shoulder hours and potential restrictions to avoid sensitive receptors (where specifically justified or required) will be determined during the detailed design phase following further development of the construction programme. Such restrictions can be included within detailed construction traffic management strategies, which would need to be approved West Sussex County Council and Local Planning Authority in accordance with Requirement 24 of the Draft Development Consent Order [REP4-004]. However, the Applicant considers that the shoulder hours (07:00 – 08:00 and 18:00 – 19:00) secured through the Outline Code of Construction Practice [REP4-043] (paragraph 4.4.2) are within periods that are considered daytime (07:00-19:00) by <i>British Standard (BS) 5228-1:2009+A1:2014 Code of practice for noise and vibration control on construction and open sites – Part 1: Noise</i> and therefore such noises are consistent with activities that would usually be considered acceptable within these hours on other construction sites. It is also worth noting that paragraph 2.6.2 of Outline construction method statement [APP-255] specifies the use of white noise warning devices for reversing.</p>

Ref	Deadline 4 submission	Applicant's response
2.4.153	<ul style="list-style-type: none"> Whilst references are made to thresholds, it should be made very clear what specific thresholds/noise limits will apply for the various key construction activities. 	<p>The thresholds that apply for noise are summarised in Table 21.15 within Chapter 21: Noise and vibration, Volume 2 of the Environmental Statement (ES) [PEPD-018].</p> <p>The majority of receptors along the onshore cable route are considered to be within the most sensitive noise category, Category A. Receptors that are in noisier ambient environments are listed in Table 21.16 within Chapter 21: Noise and vibration, Volume 2 of the ES [PEPD-018]. The Applicant notes that some receptors have different noise categories that apply depending on the time of day.</p> <p>The thresholds are considered to apply when they are likely to be exceeded for a month or more.</p>
2.4.154	<ul style="list-style-type: none"> 3.8.5 – 3.8.6 – It is noted that where there is a change of working method or procedure to that assumed by the ES, a revised noise and vibration assessment will be undertaken, and appropriate mitigation identified in the stage specific NVMP. This is welcomed, however, it is questioned why this commitment is only detailed under Section 3.8 which relates to 'Applications for consent under Section 61'. This should apply to all activities regardless of whether a Section 61 application is sought. 	<p>The Applicant wishes to clarify that the qualification for revisiting the noise and vibration assessment is that there is a risk that the change in method or procedure will lead to an increase in noise. Minor changes, or reductions in noise would not trigger a reassessment.</p> <p>The reason that this is reported within the Section 61 section of the Outline Noise and Vibration Management Plan [REP3-054] is that the nature of the changes that would trigger the reassessment may also trigger the need to apply for a Section 61 consent to allow the local authorities the opportunity to review and comment on the changes. The Applicant considers that this is the appropriate mechanism.</p>
2.4.155	<ul style="list-style-type: none"> Section 4 – It should be made clear that any phasing and duration of activities will also reassessed (as this may change once the programme of works have been finalised). 	<p>See response reference 2.1.166.</p>
2.4.156	<ul style="list-style-type: none"> Section 5 – No methodology for establishing pre-existing levels of ambient noise is provided, nor for any further assessment required. This should be clarified. There is no reference in this section regarding monitoring of activities associated with the cable route construction, and use of internal hauls routes and accesses. 	<p>Pre-existing levels of ambient noise were collected and reported in Appendix 21.1: Baseline sound report, Volume 4 of the Environmental Statement (ES) [PEPD-025].</p> <p>Monitoring of onshore cable trenching is not proposed, as this is not a significant noise generating activity, and progresses at approximately 35m a day.</p> <p>Vehicles on accesses and haul routes are also very unlikely to be the source of significant noise. This is assessed in Chapter 21: Noise and vibration, Volume 2 of the ES [PEPD-018].</p>
<p>Technical Note: Construction Access Update Assessment Summary (REP3-055)</p>		
2.4.157	<p>3.70 The review of all accesses is welcomed and previous concerns from WSCC regarding increased tree and hedgerow loss has been demonstrated. It provides a useful summary of changes to access locations, design requirements, and vegetation management required to facilitate them. However upon review, concerns remained regarding the overall potential impacts which could still occur to hedgerows, tree lines and woodland. Further detailed comments are provided below:</p>	<p>The Applicant has provided a detailed response to the review points provided by West Sussex County Council under the Appendix A heading in this table at reference 2.185. With respect to the timing of the loss, it will be temporary as amended accesses will be reinstated. Operational access will not require permanent losses. Please see response at reference 2.1.144 regarding reinstatement.</p>
2.4.158	<ul style="list-style-type: none"> Commitment C-224 regarding hedgerow coppicing for visibility splays had not been applied during the review, despite paragraph 1.3.3 suggesting otherwise (WSCC dispute that reducing hedgerows to facilitate abnormal construction access is not typical highway works to manage vegetation for visibility considerations). Therefore, WSCC carried out an exhaustive review of 	

Ref	Deadline 4 submission	Applicant's response
	<p>access points with consideration of expected or stated vegetation management. This is presented within Appendix A of this response and states any outstanding concerns which requires further clarification.</p>	
2.4.159	<ul style="list-style-type: none"> The review of access points demonstrates the following: inaccuracies within VRPs and Appendix A of the OCTMP, unknown permanent and temporary hedgerow loss, lack of recognition of Commitment C-224, unknown suitability of visibility splays, and evaluated suggestions of passing place requirements. 	
2.4.160	<ul style="list-style-type: none"> The updated total lengths of hedgerow, tree line and woodland loss presented in Table 1-2 is a welcomed review, though concerning due to the increase percentage loss of most ecological features presented. WSCC requests a further review of these ecological features based upon a further review of our findings presented in Appendix A. 	
2.4.161	<ul style="list-style-type: none"> Hedgerow clearance at many locations is suggested to be temporary, though it is not clear how this is the case in many examples where new or amended bellmouths (and their visibility splays) are required for permanent operational use in locations of existing hedgerow and tree line. For these examples, vegetation loss is not considered temporary. 	
2.4.162	<ul style="list-style-type: none"> Whilst the increased loss of hedgerows, tree lines and woodland (including permanent loss) shown in Table 1-2 may not alter the outcomes presented in E.S. Chapter 22: Terrestrial Ecology and Nature Conservation (APP-063), there will be local ecological impacts which will need to be addressed through appropriate mitigation and compensation. 	<p>The Applicant has described their approach to delivering mitigation, local enhancement and Biodiversity Net Gain within Appendix 22.15: Biodiversity Net Gain Information, Volume 4 of the Environmental Statement [REP3-019].</p>
2.4.163	<ul style="list-style-type: none"> Despite comments made under 'Landscape and Visual Commentary' acknowledging that additional vegetation losses would result in new or additional effects on landscape visual receptors, no changes to the outcomes of the assessment provided in Chapter 18 Landscape and Visual impacts are envisaged by the Applicant. This is of serious concern, with no fine-grained review of supporting assessments for individual receptors having been provided to demonstrate the validity of these findings. For example, for the A281 between Cowfold and Henfield, Table 1-28 of Appendix 18.4: Visual assessment (APP-170) identifies the magnitude of change as Negligible-Zero and level of effect as Minor/Negligible (based on woodland being retained and use of existing accesses). To the contrary, it is now evident that woodland will be lost to the west of the A281 and to the east visibility requirements will result in the loss of 20m of tree line and hedgerow. This would inevitably open up views of the cable route and construction activities in both directions for the full construction period thus resulting in significantly increased magnitude and level of impacts. 	<p>The Applicant has updated the Landscape and Visual Impact Assessment (LVIA) reported in Chapter 18: Landscape and visual impact, Volume 2 of the Environmental Statement (ES) [APP-059], Appendix 18.2: Viewpoint analysis, Volume 4 of the ES [REP4-033], Appendix 18.3: Landscape Assessment, Volume 4 of the ES [APP-169], Appendix 18.4: Visual Assessment, Volume 4 of the ES [APP-170] and Appendix 18.5: Residential Visual Amenity Assessment, Volume 4 of the ES [APP-171] at Deadline 5 to take account of visibility splay requirements at construction accesses. This has included temporary construction accesses A-56 and A-57 and the visibility splay requirements as set out in the Outline Construction Traffic Management Plan [REP4-045] and an adjustment of the LVIA for this receptor noting a significant effect at this location is reported.</p>
2.4.164	<ul style="list-style-type: none"> Ultimately, even if the assessment to date has identified significant impacts, any increase in impacts resulting from increased vegetation clearance and traffic management must be presented, acknowledged and suitable mitigation clearly identified (the magnitude of impacts that are significant are still of a variable scale). Chapter 18 and the various supporting assessments of landscape and visual impacts for individual receptors should be updated as appropriate. 	<p>The Applicant has provided updates to Chapter 18: Landscape and visual impact, Volume 2 of the Environmental Statement (ES) [APP-059], Appendix 18.2: Viewpoint analysis, Volume 4 of the ES [REP4-033], Appendix 18.3: Landscape assessment, Volume 4 of the ES [APP-169], Appendix 18.4: Visual assessment, Volume 4 of the ES [APP-170] and Appendix 18.5: Residential Visual Amenity Assessment, Volume 4 of the ES [APP-171] at Deadline 5 and sought to address the clarity on mitigation by reinstatement in Section 1.2 of the Outline Landscape and Ecology Management Plan [REP4-047] at Deadline 5. The Applicant has also provided embedded environmental measures in the further design of the accesses to avoid losses by applying traffic management measures such as traffic management and speed reductions.</p>

Ref	Deadline 4 submission	Applicant's response
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4 Engagement with the Applicant on the Proposed Heads of Terms for the Section 106

2.4.165	4.1 WSCC and the Applicant have been in discussions regarding the proposed Section 106 Agreement. WSCC have provided commentary on these Heads of Terms and will continue engagement with the Applicant to reach agreement.	Noted, the Applicant is continuing to engage with West Sussex County Council to agree on the Heads of Terms.
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5 Applicant's responses to the ExAs First Set of Written Questions

2.4.167	5.1 WSCC have provided commentary where considered appropriate, to ExA Q1 responses by the Applicant (REP3-051). These can be found in Appendix B.	The Applicant has provided a response to Appendix B below where this would be helpful to the Examining Authority.
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Appendix A - WSCC Review of Access Points and Vegetation Removal (Accesses with WSCC outstanding concerns are highlighted in orange)¹

2.4.168	Table ref.	Access ref.	Type of access	Accommodation works (as stated within Appendix A of the Outline Construction Traffic Management Plan (OCoCP) [REP3-030])	Proposed works - Vegetation Retention Plan (VRP) [REP3-026]	Design Proposal and Change Description - Construction Access Update Assessment Summary [REP3-055]	WSCC Outstanding concerns	Applicant's Response
	e.	A-05	Construction and operational	New temporary construction bellmouth required	H10 – cleared to 20m	Design Proposal: Bellmouth design with checks on swept path analysis for expected vehicles and horizontal visibility splays. Description of change: At DCO application the existing field entrance was assumed to be wide enough to enable access. However, access for low loaders is to be taken from south of this point. Vegetation loss is updated based on new swept path analysis.	Proposed clearance of up to 20m of H10 is considered excessive and coppicing should be applied if practicable. Submission of visibility splays and swept path analysis are requested to understand and justify proposal at this location.	<p>The Applicant notes that the 20m clearance is a worst-case based on the turning of large low loaders into the temporary construction compound that are travelling from the south. Detailed design may enable the vegetation loss to be reduced in this location.</p> <p>Vegetation losses at the access point represent the realistic worst case scenario based on the largest vehicle expected to be utilised at the access by the Principal Contractor to deliver the largest items required for construction. It is noted that this does not include additional vegetation management which may be required to obtain the visibility splays. The magnitude of vegetation management will be governed by the rate of growth of the existing vegetation at the time of detailed design and construction. The assessment undertaken represents a realistic worst case, since consideration has been given to elements; such as, two-way access requirements and the largest vehicle type(s) that may be used. The largest vehicles may not be used and</p>

¹ Rows have only been included in the response where West Sussex County Council identified remaining concerns

Ref	Deadline 4 submission					Applicant's response	
g.	A-08	Light Construction	No accommodation works required – existing access	None (nor obstructing vegetation immediately behind shown in document and Google Street View)	N/A	The Arboricultural Impacts Plans within AIA [APP-194] needs to reflect pruning works required to enable use of access.	will be clarified at the detailed design stage, including the scope for vegetation removal (coppicing etc.) which will be detailed within the stage specific Vegetation Retention and Removal Plans. Therefore, the Applicant will not be sharing further design information at this stage. The Applicant notes that the Arboricultural Impacts Plans (Annex 2 within Appendix 22.16: Arboricultural Impact Assessment, Volume 4 of the Environmental Statement [REP4-037] have been updated and submitted at Deadline 5 to show feature as 'to be pruned'. This is also presented in the Outline Vegetation Retention and Removal Plan (Document Reference: 8.87) (submitted at Deadline 5). The scope for vegetation removal (coppicing etc.) which will be detailed within the stage specific Vegetation Retention and Removal Plans.
h.	A-09	Construction and Operational	No accommodation works required – existing access	None (nor obstructing vegetation immediately behind and surrounding shown in document and Google Street View)	N/A	The Arboricultural Impacts Plans within AIA [APP-194] needs to reflect pruning works required to enable use of access.	The Applicant notes that the Arboricultural Impacts Plans (Annex 2 within Appendix 22.16: Arboricultural Impact Assessment, Volume 4 of the Environmental Statement [REP4-037] have been updated and submitted at Deadline 5 to show feature as 'to be pruned'. This is also presented in the Outline Vegetation Retention and Removal Plan (Document Reference: 8.87) (submitted at Deadline 5). The scope for vegetation removal (coppicing etc.) which will be detailed within the stage specific Vegetation Retention and Removal Plans.
j.	A-11	Operational	New temporary construction bellmouth required	H27 cleared to 15m in same vicinity of HS8 being coppiced.	N/A	If access is for operational use only, why is a new temporary construction bellmouth required? Uncertain if clearance for H27 is required for this access. Uncertain if HS8 is the same area as H27.	The Applicant notes that no clearance for access A-11 is required as this is an existing gateway for operational access only. H27 and HS8 are features alongside each other (hedgerow and bramble scrub). The vegetation loss and the temporary construction access bellmouth in this location relate to the temporary construction access A-12.
k.	A-12	Construction	New temporary construction bellmouth required	None.	Design Proposal: Banksman support may be required for specific movements if	The Construction Access Update Assessment	The Applicant notes that access A-12 is the temporary construction access that crosses H27. It is further north than the existing gated entrance that is

Ref	Deadline 4 submission				Applicant's response		
					<p>Lyminster Bypass is not open (as this would reduce baseline traffic flows)</p> <p>Description of change: At DCO application, the construction access assumed use of existing gate. Due to the caravan park, this gate could not be used for construction. Therefore, the width of haul road at 6m was added. Further engineering review, and subsequent environmental input, the revised Swept Path Analysis allowed the junction width to be reduced, requiring a loss of 15m of hedgerow and management of hedgerow north and south of this point. Note additional traffic management may be required, such as possible support from a banksmen, due to the reduced junction size.</p>	<p>Summary [REP3-055] appears to be discussing an alternate access as no hedgerow exists at this access. Should this be mistaken for A-11, it should be noted that this access point is stated as operational only; it remains unclear as to why the caravan park prevents use of gated existing access.</p>	<p>adjacent to the caravan park and is situated in this location to manage effects, such as noise, on the caravan park residents.</p>
n.	A-15	Construction and operational	New temporary construction bellmouth required	None	N/A	<p>Unsure of the purpose for access as location of A-15 is shown within centre of fields (Figure 7.6.4a of OCTMP). No tree lines or hedgerows are present based on location plan, though the location photograph shown within Appendix A of the OCTMP clearly shows hedgerow to be present.</p>	<p>The Applicant notes that this access (A-15) is in place as it will provide access from the Lyminster by-pass (currently under construction).</p>
o.	A-16	Construction and operational	New temporary construction bellmouth			<p>Same comment as A15 applies to this access. It is unclear</p>	<p>The Applicant notes that this access point (A-16) is in place as it will provide access from the Lyminster by-pass (currently under construction).</p>

Ref	Deadline 4 submission				Applicant's response		
			required			as to why two accesses are required within such close proximity, if required at all.	
s.	A-21	Construction	New temporary construction bellmouth required	None	Design Proposal: Access design to be confirmed. Junction shared with National Highways on 29th February 2024 for review, which included environmental mitigation. An environmental assessment will be completed once this design has been confirmed. Description of change: n/a	It is anticipated that design can avoid the loss of maturing trees within tree line W7 currently shown for retention.	The Applicant notes that design options in this location (access A-21) are with National Highways for further comment and agreement.
t.	A-22	Construction	New temporary construction bellmouth required		Design Proposal: Access design to be confirmed. Junction shared with National Highways on 29th February 2024 for review, which included environmental mitigation. An environmental assessment will be completed once this design has been confirmed. Description of change: n/a	It is anticipated that design can avoid the loss of category B trees T1154 and T1156 within tree line W12.	The Applicant notes that design options in this location (access A-22) are with National Highways for further comment and agreement.
ee.	A-33	Construction	New temporary construction bellmouth required	H206a cleared to 25m	Design Proposal: Bellmouth design with checks on swept path analysis for expected vehicles and horizontal visibility splays. Description of change: Design incorporating Swept path analysis requires additional hedgerow loss, although use of banksmen for some movements reduces this requirement. Visibility splays achieved via vegetation management.	Proposed clearance of up to 25m of H206a is considered excessive and coppicing should be applied if practicable. Location photograph within Appendix A of OCTMP is incorrect. Submission of visibility splays and swept path analysis are requested to understand and	The Applicant notes that the photo in Appendix A of the Outline Construction Traffic Management Plan [REP4-045] has been updated at Deadline 5. Other details, such as requirement for new construction bellmouth are correct. The Applicant also notes that West Sussex County Council has not accepted use of Manual for Streets (MfS) visibility splays on the A283 so these will need to be based upon Design Manual for Roads and Bridges (DMRB) (2.4m by 120m). Vegetation losses at the access point represent the realistic worst case scenario based on the largest vehicle expected to be utilised at the access by the Principal Contractor to deliver the largest items required for construction. It is noted that this does not include additional vegetation management which may be required to obtain the visibility splays. The

Ref	Deadline 4 submission	Applicant's response
kk.	<p>A-39 Construction and operational</p> <p>New temporary construction bellmouth required.</p> <p>Temporary 40mph speed limit to be applied whilst construction access is in use.</p> <p>Appropriate signage will be put in place to warn drivers of construction traffic.</p>	<p>W489 cleared to 20m</p> <p>Design Proposal: Bellmouth design with checks on swept path analysis for expected vehicles and horizontal visibility splays. Description of change: Access design and swept path analysis shows requirement of removal of 20m of tree line to gain access to compound. Visibility splays achieved through management of existing vegetation. Access moved approximately 95m to the east to minimise vegetation losses. Note additional traffic</p> <p>justify proposal at this location.</p> <p>Presuming a temporary speed restriction to 40mph is approved, clearance of only 20m of tree line appears quite minimal. Submission of visibility splays and swept path analysis are requested to understand and justify proposal at this location. As the access is for operational purposes, it is not known if a 20m tree line clearance acceptable once temporary speed restrictions are removed.</p> <p>magnitude of vegetation management will be governed by the rate of growth of the existing vegetation at the time of detailed design and construction. The assessment undertaken represents a realistic worst case, since consideration has been given to elements; such as, two-way access requirements and the largest vehicle type(s) that may be used. The largest vehicles may not be used and will be clarified at the detailed design stage, including the scope for vegetation removal (coppicing etc.) which will be detailed within the stage specific Vegetation Retention and Removal Plans. Therefore, the Applicant will not be sharing further design information at this stage.</p> <p>The applicant notes that the losses have been mitigated at this stage through bellmouth design in this location, to allow for only access or egress from the east.</p> <p>The Applicant notes that the 20m clearance is to enable access for vehicles that will access the temporary construction compound, as presented in the Outline Vegetation Retention and Removal Plan (Document Reference: 8.87) (submitted at Deadline 5). Visibility splays in this location have been reviewed and can be achieved through vegetation management, as opposed to removal.</p> <p>Vegetation losses at the access point represent the realistic worst case scenario based on the largest vehicle expected to be utilised at the access by the Principal Contractor to deliver the largest items required for construction. It is noted that this does not include additional vegetation management which may be required to obtain the visibility splays. The magnitude of vegetation management will be governed by the rate of growth of the existing vegetation at the time of detailed design and construction. The assessment undertaken represents a realistic worst case, since consideration has been given to elements; such as, two-way access requirements and the largest vehicle type(s) that may be used. The largest vehicles may not be used and will be clarified at the detailed design stage, including the scope for vegetation removal (coppicing etc.) which will be detailed within the stage specific</p>

Ref	Deadline 4 submission			Applicant's response			
ii.	A-40	Construction and Operational	<p>No accommodation works required – existing access.</p> <p>Temporary 40mph speed limit to be applied whilst construction access is in use.</p> <p>Appropriate signage will be put in place to warn drivers of construction traffic.</p> <p>Banksman may be required to support specific turning movements.</p>	H167 cleared to 12m	<p>Design Proposal: Bellmouth design with checks on swept path analysis for expected vehicles and horizontal visibility splays. Description of change: Swept path analysis suggests vegetation removal necessary for access of largest vehicles. Visibility splays achieved through vegetation management. Note additional traffic management, such as</p>	<p>It is unclear as to why coppicing / reduction in height of H167 could not achieve required visibility splays.</p> <p>Submission of visibility splays and swept path analysis are requested to understand and justify proposal at this location.</p> <p>As the access is for operational purposes, it is not known if a 12m hedgerow clearance is acceptable once temporary speed restrictions are removed.</p>	<p>Vegetation Retention and Removal Plans. Therefore, the Applicant will only be sharing the Road Safety Audit information at this stage, with no further design information shared.</p> <p>The Applicant notes that hedgerow H167 would be subject to some loss due to the size of vehicle that would need to enter. The hedgerow outside of this loss would be managed to ensure visibility. A-40 is a temporary construction access hence habitat loss, during the operation and maintenance phase the hedgerow will have been reinstated.</p> <p>Vegetation losses at the access point represent the realistic worst case scenario based on the largest vehicle expected to be utilised at the access by the Principal Contractor to deliver the largest items required for construction. It is noted that this does not include additional vegetation management which may be required to obtain the visibility splays. The magnitude of vegetation management will be governed by the rate of growth of the existing vegetation at the time of detailed design and construction. The assessment undertaken represents a realistic worst case, since consideration has been given to elements; such as, two-way access requirements and the largest vehicle type(s) that may be used. The largest vehicles may not be used and will be clarified at the detailed design stage, including the scope for vegetation removal (coppicing etc.) which will be detailed within the stage specific Vegetation Retention and Removal Plans. Therefore, the Applicant will not be sharing further design information at this stage.</p>
nn.	A-42	Construction and Operational	<p>New temporary construction bellmouth required.</p> <p>Temporary 40mph speed limit to be applied whilst construction access is in use.</p>	H197 cleared to 15m	<p>Design Proposal: Bellmouth design with checks on swept path analysis for expected vehicles and horizontal visibility splays. Description of change: Swept path analysis showed loss of Category A ash if using existing access point to timber yard, plus potential loss of hedgerow alongside of existing track. Access moved</p>	<p>NOTE: T1020 is a category B tree, not category A. Retention of tree welcomed.</p> <p>As the access is for operational purposes, it is not clear if a 15m hedgerow clearance will be acceptable once</p>	<p>The Applicant notes that hedgerow clearance is temporary and for the construction phase only. As described in Chapter 22: Terrestrial ecology and nature conservation, Volume 2 of the Environmental Statement [REP4-022] (updated at Deadline 5) reinstatement begins within two years of the loss occurring in the majority of locations. The Outline Code of Construction Practice [REP4-043] (updated at Deadline 5) provides more information on management, monitoring and the process of remedial action.</p>

Ref	Deadline 4 submission	Applicant's response
		<p>The operational access would use the existing track that runs adjacent to the timber yard.</p>
oo.	<p>A-43, 43a & 43b</p> <p>Construction and operational</p>	<p>Appropriate signage will be put in place to warn drivers of construction traffic.</p> <p>Banksman may be required to support specific turning movements.</p> <p>No accommodation works required – existing access.</p> <p>H201a assumed cleared to 6m.</p> <p>43a only- Design Proposal: Typical bellmouth design overlay applied to junction position. Description of change: Additional vegetation losses predicted to allow access of largest vehicles.</p> <p>NOTE: H201a is not labelled on VRP Figure 7.2.1g.</p> <p>Pruning of adjacent woodland W1149 to east of access A-43 expected to facilitate access. Arboricultural Impacts Plans within AIA [APP-194] indicates this woodland has a TPO (ref. W39 within AIA) with no pruning identified.</p> <p>A-43b does not appear suitable for construction access.</p> <p>Due to importance and value of adjacent trees, hedgerows and woodland features, and the narrow lane, it is not known how accommodation works such as 'passing places' are achievable without additional</p> <p>The access tracks leading from the A283 at are narrow. Passing places should be considered on the access tracks to enable two vehicles to pass. Alternately traffic management measures may be required to avoid conflicting movements.</p> <p>Temporary 40mph speed limit to be applied whilst construction access is in use. Appropriate signage will be put in place to warn drivers of construction traffic. Banksman may be required to support specific turning movements.</p> <p>approximately 15m to the east to minimise losses and retain category A tree. Note additional traffic management, such as possible support from a banksman and temporary speed limit reduction, is to minimise vegetation losses as far as possible by reducing swept path and visibility splay requirements.</p> <p>temporary speed restrictions are removed.</p> <p>It is not clear is this hedgerow clearance is a permanent loss.</p> <p>H201a feature is shown on Figure 7.2.1g and Figure 7.2.6j within Outline Vegetation Retention and Removal Plan (Document Reference: 8.87) (submitted at Deadline 5) however the Applicant notes the label is missing in Figure 7.2.1g and has been added to the updated submission at Deadline 5.</p> <p>The access has been reviewed and is considered to be appropriate.</p> <p>The Arboricultural Impacts Plans (Annex 2 within Appendix 22.16: Arboricultural Impact Assessment, Volume 4 of the Environmental Statement [REP4-037]) has been updated and submitted at Deadline 5 to show feature as 'to be pruned'. This will involve the removal of smaller lower branches that overhang the existing access road. This is also presented in the Outline Vegetation Retention and Removal Plan (Document Reference: 8.87) (submitted at Deadline 5).</p> <p>Access A-43b is noted as a temporary construction access, which is incorrect as this access is identified as operational only. Access A-43 and A-43a are proposed to facilitate the construction traffic (see Outline Construction Traffic Management Plan [REP4-045] (updated in Deadline 5). Visits to site, including review during conceptual design stages, have indicated sufficient space to facilitate passing places within the existing verge (between the access track and hedgerow). This will be validated following further surveys during detailed design. It is noted that existing services are present which will also need to be considered and potentially temporarily diverted to facilitate these.</p>

Ref	Deadline 4 submission				Applicant's response		
rr.	A-46	Light Construction and Operational	No accommodation works required – existing access	H246 notched 14m	N/A	<p>vegetation loss over that identified within VRPs.</p> <p>It is not clear why notching of H246 is required, noting that the OCoCP clearly indicates notching to be a methodology only applied on the cable corridor.</p>	<p>H246 runs along the operational access route and across the field. There are only works on the hedgerow within the field as the transmission cables cross. There is no vegetation loss at Spithandle Lane. The location of H246 by Spithandle Lane is included in Outline Vegetation Retention and Removal Plan (Document Reference: 8.87) (submitted at Deadline 5) as all parts of the linear feature are shown when within the proposed DCO Order Limits.</p>
vv.	A-50, A-50a & A-50b	Construction and Operational	No accommodation works required – existing access	H309 cleared to 10m	<p>A-50a only- Design Proposal: Typical bellmouth design overlay applied to junction position. Description of change: 10m loss of hedgerow to widen existing access point.</p>	<p>Existing gated access point for A-50a is shown outside of the DCO Limits.</p> <p>H307, which enables access to the cable route from A-50a, is shown to be retained and appears to be a continuous without a break. This requires review, including DCO Schedule 13.</p>	<p>The Applicant is content that access A-50 falls within the proposed DCO Order Limits. H307 has a track passing through it that was an access used to construct a slurry pit extension and is still in place.</p>
yy.	A-53	Construction	No accommodation works required – existing access	H380 notched 6m	<p>Design Proposal: Bellmouth design with checks on swept path analysis for expected vehicles and horizontal visibility splays. Description of change: Swept path analysis shows existing entrance is not wide enough and suggests vegetation loss is necessary to enable access by expected vehicles. Low loaders excluded from using this access to reduce potential vegetation losses.</p>	<p>NOTE: Construction Access Update Assessment Summary [REP3-055] states a loss of 6m.</p> <p>It is not clear why notching of H380 is required, noting that the OCoCP clearly indicates notching to be a methodology</p>	<p>The Applicant notes that H380 will lose a stretch of 6m to facilitate access. Loss of 6m and a notch of 6m are the same thing (i.e. a clearance of 6m of hedgerow that will then be replaced following the end of construction in the area).</p> <p>As described in Table 1-1 (page 9) within Deadline 3 Submission – 8.61 Technical Note Construction Access Update Assessment Summary [REP3-055], access A-53 is confirmed to have the assumption that only tipper Heavy Goods Vehicles (HGVs) and Light Goods Vehicles (LGVs) will use access A-53 with articulated and low loader vehicles instead using access A-52. HGV routing was</p>

Ref	Deadline 4 submission	Applicant's response
		<p>justify proposal at this location.</p> <p>which will be detailed within the stage specific Vegetation Retention and Removal Plans. Therefore, the Applicant will not be sharing further design information at this stage.</p> <p>As the access is for operational purposes, it is not known if a 10m tree line clearance is acceptable once temporary speed restrictions are removed.</p>
ccc.	<p>A-57 Construction and operational</p> <p>No accommodation works required – existing access. The access tracks leading from the B2135 at are narrow. Passing places should be considered on the access tracks to enable two vehicles to pass. Alternately traffic management measures may be required to avoid conflicting movements.</p> <p>W367 cleared to 20m. H406 cleared to 20m.</p> <p>Temporary 40mph speed limit to be applied whilst construction access is in use.</p> <p>Appropriate signage will be put in place to warn drivers of construction traffic.</p>	<p>Design Proposal: Temporary speed limit reduction (40mph). Banksman may be required to support specific movements. Highway width constraints within Cowfold will require articulated HGVs and low loaders to access junction from the south via A281, A2037 and A283.</p> <p>Description of change: Swept path analysis shows existing entrance is not wide enough and suggests vegetation loss is necessary to enable access by expected vehicles. Note additional traffic management, such as possible support from a banksmen and temporary speed limit reduction, is to minimise vegetation losses as far as possible by reducing swept path and visibility splay requirements.</p> <p>The amount of vegetation removal seems excessive for the description of change.</p> <p>Submission of visibility splays and swept path analysis are requested to understand and justify proposal at this location.</p> <p>A worst case scenario has been allowed for at this access point A-57. Reduction of vegetation loss at detailed design may be possible.</p> <p>Vegetation losses at the access point represent the realistic worst case scenario based on the largest vehicle expected to be utilised at the access by the Principal Contractor to deliver the largest items required for construction. It is noted that this does not include additional vegetation management which may be required to obtain the visibility splays. The magnitude of vegetation management will be governed by the rate of growth of the existing vegetation at the time of detailed design and construction. The assessment undertaken represents a realistic worst case, since consideration has been given to elements; such as, two-way access requirements and the largest vehicle type(s) that may be used. The largest vehicles may not be used and will be clarified at the detailed design stage, including the scope for vegetation removal (coppicing etc.) which will be detailed within the stage specific Vegetation Retention and Removal Plans. Therefore, the Applicant will not be sharing further design information at this stage.</p>

Ref	Deadline 4 submission			Applicant's response			
ggg.	A-61	Construction and operational	New temporary construction bellmouth required	H505 cleared to 20m	<p>Design Proposal: Bellmouth design with checks on swept path analysis for expected vehicles and horizontal visibility splays. Description of change: Swept path analysis shows existing entrance is not wide enough and suggests vegetation loss is necessary to enable access by expected vehicles. Note additional traffic management, such as possible support from a banksmen and a detailed traffic management strategy, helps to minimise vegetation losses as far as possible by reducing the requirement for further highway widening.</p>	<p>The Construction Access Update Assessment Summary [REP3-055] also suggests a loss of trees, though the VRP Figure 7.2.1k (C) suggests the treeline is retained. The final location of this access point should consider retaining trees of better quality than simply removing those from directly adjacent the existing gate, such as those 10m south of the gate.</p>	<p>It is H505 which is a hedgerow with standard trees and is shown as being cleared to 20m. Commitment C-292 (Commitments Register [REP4-057]) will ensure that the mitigation hierarchy is implemented and tree quality will be considered at the detailed design phase.</p>
hhh.	A-62	Construction	No accommodation works required – existing access	H612 cleared to 15m (note 2x oak trees to be retained by crown lifting and root protection measures)	<p>Design Proposal: Bellmouth design with checks on swept path analysis for expected vehicles and horizontal visibility splays. Description of change: Swept path analysis and junction design updated to enable safe access and operation of compound and additional businesses on Oakendene Industrial Estate. Suggests additional vegetation loss is necessary. Note alternations to existing access road, helps to minimise vegetation losses as far as possible.</p>	<p>Access is assumed between two trees, T195 (category A) and T196 (category B). Further demonstration that these trees can be retained without adverse damage from significant pruning or root compaction from expected construction activity.</p> <p>WSSC would like further understanding as to why access cannot be achieved using the location of the existing gated access for the field and surrounding open areas with</p>	<p>It should be noted that detailed design for this, and all other accesses, will be approved by West Sussex County Council in accordance with Requirement 15 (Highway accesses) and the new Requirement 40 (Vegetation retention and removal) within the Draft development Consent Order [REP4-004]. Full detailed design at this time is not necessary or realistic.</p> <p>Access between the trees is considered feasible and is based on swept path analysis and an assessment of the amount of pruning required. The scope of the pruning will be confirmed at the detailed design stage and confirmed in stage specific Vegetation Retention and Removal Plans. Detailed design will include reviews of the actual vehicles to be utilised, load types, construction logistics and include results from the Road Safety Audit, currently being undertaken for this access.</p> <p>Multiple access location options are available within the proposed DCO Order limits for this location, and alternatives may be considered depending on the outcome of the road safety audit. The Applicant's preliminary design assessed the option of using the</p>

Ref	Deadline 4 submission				Applicant's response		
						less environmental constraints.	<p>existing gated access and the swept path analysis showed that Heavy Goods Vehicles (HGVs) turning out of the gate and left onto the A272 would overrun the centre line of the access junction and A272. This was considered to present a road safety risk, noting in particular that vehicles entering the access from east of the junction would not have visibility of vehicles making these manoeuvres until turning in from the A272 and would therefore have inadequate time to stop. This issue is overcome through the provision of the straighter access between the trees.</p> <p>Proprietary ground protection suitable for the specific size and weight of vehicles using this access point would be incorporated into the Tree and Hedgerow Protection Scheme secured by Requirements 22(4)(a) of the Draft Development Consent Order [REP4-004] in accordance with Appendix 22.16: Arboricultural Impact Assessment, Volume 4 of the Environmental Statement (updated at Deadline 5).</p>
iii.	A-63	Construction and operational	New temporary construction bellmouth required	H520b lost permanently (100m including hedgerow trees)	Design Proposal: Bellmouth design with checks on swept path analysis for expected vehicles and horizontal visibility splays. Description of change: Swept path analysis and junction design to enable safe access and operation of compound shows additional vegetation losses necessary. Note additional traffic management, such as temporary speed limit reduction, is to minimise vegetation losses as far as possible by reducing visibility splay requirements.	WSCC remain of the opinion that T280 can be retained to facilitate this access and will await submission of revised outline arboricultural impact assessment to confirm worst-case scenario.	The Applicant notes that the worst case scenario see T280 as lost. Detailed design will consider retaining this tree should it be possible.
jjj.	A-64	Construction and operational	No accommodation works required – existing access	H505 cleared to 10m (now totalling 30m clearance)	Design Proposal: Bellmouth design with checks on swept path analysis for expected vehicles and horizontal visibility splays. Description of change: Swept path	It is unclear as to why hedgerow clearance and tree loss is required. Submission of visibility splays and	H505 is shown as cleared to 20m within the Outline Vegetation Retention and Removal Plan (Document Reference: 8.87) (submitted at Deadline 5) and is required for access A-61. H509 is shown as cleared to 10m within Outline Vegetation Retention and Removal Plan (Document Reference: 8.87)

Ref	Deadline 4 submission					Applicant's response		
kkk.	A-65	Operational	New temporary construction bellmouth required	None	N/A	analysis shows existing entrance is not wide enough and suggests vegetation loss is necessary to enable access by expected vehicles. Note additional traffic management, such as possible support from a banksman and a detailed traffic management strategy, is to minimise vegetation losses as far as possible by reducing the requirement for further highway widening.	swept path analysis are requested to understand and justify proposal at this location.	<p>(submitted at Deadline 5) which is on the opposite side of Kent Street and required for access A-64.</p> <p>Vegetation losses at the access point represent the realistic worst case scenario based on the largest vehicle expected to be utilised at the access by the Principal Contractor to deliver the largest items required for construction. It is noted that this does not include additional vegetation management which may be required to obtain the visibility splays. The magnitude of vegetation management will be governed by the rate of growth of the existing vegetation at the time of detailed design and construction. The assessment undertaken represents a realistic worst case, since consideration has been given to elements; such as, two-way access requirements and the largest vehicle type(s) that may be used. The largest vehicles may not be used and will be clarified at the detailed design stage, including the scope for vegetation removal (coppicing etc.) which will be detailed within the stage specific Vegetation Retention and Removal Plans. Therefore, the Applicant will not be sharing further design information at this stage.</p>
III.	A-66	Light Construction and Operational	<p>New temporary construction bellmouth required. Temporary 40mph speed limit to be applied on Wineham Lane whilst construction access is in use.</p> <p>Appropriate signage will be put</p>	None shown, though roadside hedge present	N/A		Access shown in Appendix A of the OCTMP requires loss of a hedgerow which has not been identified on VRP. It is assumed the access is the existing driveway opposite as it is not clear why both A-66 and A-67 would be required providing	<p>The Applicant notes that access A-65 is an access along an existing driveway that is accessed from Wineham Lane.</p> <p>Appendix A of the Outline Construction Traffic Management Plan [REP4-045] has been reviewed and updated at Deadline 5 to show the correct location for access A-65.</p> <p>Access A-66 provides access to the west side of Wineham Lane, and therefore serves a different section of the onshore cable route than access A-67. Access A-66 uses an existing tarmac driveway to gain access and no hedgerow loss is proposed (as shown on the Outline Vegetation Retention and Removal Plan (Document Reference: 8.87) (submitted at Deadline 5) Access A-67 (described below) requires both temporary and permanent hedgerow loss.</p>

Ref	Deadline 4 submission					Applicant's response
			<p>in place to warn drivers of construction traffic.</p>			<p>access into the same field to east.</p> <p>If the access is proposed through the hedgerow, any vegetation loss here would be permanent if used operationally.</p> <p>As operational access can be made from existing gated points from Bolney Station, it is not clear why this access would be required.</p> <p>VRP fails to recognise existing tree planting which is required in order to mitigate the previous Rampion 1 OWF access. This planting needs to be reflected as an existing tree line as a baseline, it requires recognition within VRPs to ensure any loss accounted and mitigated for.</p> <p>Any vegetation loss here would be permanent if used operationally.</p> <p>As operational access can be made from existing gated points from Bolney Station, it is</p> <p>The Applicant notes that hedgerow loss has been updated within in Outline Vegetation Retention and Removal Plan (Document Reference: 8.87) (submitted at Deadline 5).</p> <p>Overall, temporary loss of 15m of young hedgerow plants would be required for construction access. Following completion of construction reinstatement would occur across 12m of the access point, with 3m permanently lost for the installation of a gate for operational access.</p>
mmm.	A-67	Construction and operational	<p>New temporary construction bellmouth required. Temporary 40mph speed limit to be applied on Wineham Lane whilst construction access is in use. Appropriate signage will be put in place to warn drivers of construction traffic.</p>	<p>None shown, though existing planting present to mitigate damage from Rampion 1.</p>	N/A	

Ref	Deadline 4 submission	Applicant's response
		<p>not clear why this access is required.</p> <p>The OCTMP recognises this access as existing, though this is not the case for reasoning stated above.</p>

Appendix B: Table 1. WSCC commentary on the Applicants responses to ExAs first set of Written Questions (REP3-051)

2.4.169	Reference	Question to:	WSCC Response at Deadline 4	Applicant's response
	DCO			
	DCO 1.31	The Applicant	<p>WSCC welcomes the addition of the Commitments Register as a certified document. However, consideration could also be given to a clause in the DCO [REP3-003] under Schedule 14 'Procedure for discharge of certain approvals' that specifies <i>"Where an application is made to the relevant planning authority, a highway authority, LLFA for any consent, agreement or approval required under any of the provisions of this Order such application shall, where appropriate, identify and demonstrate compliance with the relevant commitments as set out in Commitment Register"</i>.</p>	<p>This amendment is not considered necessary; without specifying the exact commitments this change would render the provision imprecise. The requirements requiring discharge require the details to accord with the terms of an outline control plan, which in themselves detail the commitments relevant to their subject matter.</p>
	Biodiversity			
	BD 1.3	The Applicant	<p>a) No further comments. b) No further comments. c) As stated in WSCC Response to Examining Authority First Set of Written Questions (REP3-073) question DCO 1.19, WSCC is concerned over the mechanism to ensure that BNG is implemented on the ground and within the expected timescales, and as such has proposed more robust wording for Requirement 14 (Biodiversity Net Gain).</p>	<p>The Applicant notes that both Section 106 and conservation covenants are referenced in paragraph 5.4.4 of Appendix 22.15: Biodiversity Net Gain Information, Volume 4 of the Environmental Statement [REP3-019] updated at Deadline 5. The Applicant notes that an alternative form of Requirement 14 has been included in the Draft Development Consent Order [REP4-004] (updated at Deadline 5) as detailed in the Applicant's Comments on the Examining Authority's Schedule of Changes to the DCO (Document Reference: 8.83).</p>

Ref	Deadline 4 submission	Applicant's response
		In response to the question ('Explain how off-site BNG would be secured'), the Applicant simply refers to a Section 106 agreement between the landowner and the relevant planning authority or a conservation covenant. Surprisingly, neither of these mechanisms are mentioned in Section 5.4 (Securing Biodiversity Net Gain) of Appendix 22.15, BNG Information Rev. B, [REP3-019]. d) No further comments.
BD 1.8	Natural England SNDPA West Sussex CC	The delivery prior to commencement of construction of 70% of the total BNG units (i.e. those required in compensation, plus a 10% uplift from the baseline) seems a reasonable approach.
BD 1.9	The Applicant	<p>a) No further comments.</p> <p>b) It would be helpful if the Applicant could provide outline details on the proposed content of the stage specific BNG strategies.</p> <p>c) The response by the Applicant that habitat created at Oakendene Substation '<i>has potential to be accounted for as BNG subject to landowner agreement</i>' is of concern. Should it not be considered as BNG, will it still be managed and monitored for a minimum of 30 years?</p>
		The Applicant welcomes the comment from West Sussex County Council that the securing of biodiversity net gain (BNG) units prior to commencement of construction is a reasonable approach.
		Details of the proposed content of the stage specific biodiversity net gain (BNG) strategies can be found in the answer provided to question BD 2.4 in the Applicant's Responses to Examining Authority's Second Written Questions (ExQ2) (Document reference: 8.81).
		The Applicant notes that negotiations with the landowner are ongoing. The rights required for BNG are novel and restrictive. However, it is the intention for the habitats to be managed around the onshore substation at Oakendene for BNG. These habitats will be actively managed and will be in place for the long term regardless of whether or not these would be included in the BNG calculations. If the BNG technical requirements prove to be unsuitable for this site, alternate additional provision would be secured.
	Design	
DE 1.3	The Applicant	<p>The general design principles are positive in regard to minimising impacts of Work No. 16 to Oakendene Manor via changes to its setting and loss of historic parkland.</p> <p>The updated Indicative Landscape Plan (AS-003) is welcomed, and the information on phasing of tree planting along the western edge of the substation provided by the inclusion of the Indicative Planting Phasing Plan provides some reassurance.</p> <p>The revisions to the historic environment design principles section within the DAS are welcomed, especially the advance planting of native parkland trees. However, the wording of the Historic Environment design principles (now HE1 – HE4) remains somewhat non-committal, with wording</p>
		The Applicant welcomes the updated position from West Sussex County Council. With regards the historic environment design principles, the Applicant has provided an update to the Design and Access Statement [REP3-013] at Deadline 5 to reinforce the intention to maximise opportunities for reducing effects at the detailed design stage.

Ref	Deadline 4 submission	Applicant's response
Historic Environment		
HE 1.9	Historic England	See the Applicant's response at references 2.1.102 and 2.1.103.
	<p>such as 'seek to reduce' remaining unchanged since the previous version of the DAS.</p>	
	<p>The Applicant confirms that <i>'the priority is for avoidance of impacts to archaeological remains of national significance ('retention in situ'), followed by 'preservation by record' where impacts are unavoidable'</i>. WSCC agrees with this hierarchy. Amended Commitment C-225 sets out some helpful details and examples of possible design and engineering solutions for avoiding archaeology of high significance. WSCC finds that C-225 does not provide sufficient guarantee that in the event that high significance remains are identified, it will be possible to secure their preservation. The wording of C-225 remains somewhat vague, with phrases such as 'consideration will be made for engineering solutions' and 'Where impacts are not avoidable' conveying a lack of certainty and commitment to delivery of avoidance.</p> <p>The addition of specific references to C-79, C-80 and C-225 within the Outline Onshore Written Scheme of Investigation (OOWSI; [APP-231]), which is secured by Schedule 1, Part 3, Requirement 19 of the Draft Development Consent Order [REP2-002]), and reference to C-79 and C-225 within the Outline Code of Construction Practice (OCoCP; REP3-025), which is secured by Schedule 1, Part 3, Requirement 22 of the dDCO, is welcomed.</p> <p>The addition to the OOWSI of the section on avoidance ([APP-231] paras. 4.4.8 – 4.4.12 and Appendix B) is greatly welcomed. It makes the process for assessing the significance of identified remains, and identifying the need for preservation in situ of high significance remains, much clearer. The active consideration of the avoidance pathways from evaluation stage is a positive measure.</p> <p>However, the protocol still does not provide a guarantee that in the event that high significance remains are identified, it will be possible to secure</p>	

Ref	Deadline 4 submission		Applicant's response
HE 1.10	The Applicant	<p>their preservation. By the nature of the process, this solution is contingent upon engineering constraints and will rely on the feasibility of design solutions proposed by the Principal Contractor ([APP-231] para. 4.4.10). These will also be contingent upon archaeological factors (including the location, type, extent, depth etc of any such archaeological remains). As there has been virtually no field evaluation to date, these factors remain unknown.</p> <p>WSCC therefore considers that the preservation by record of high significance archaeological remains can still not be assured due to the reliance on many unknown variables. This is especially true within the area of prehistoric downland, where there is a high potential for specific classes of archaeology which would be of national significance, but also likely to be especially problematic to preserve in situ. For example, Neolithic flint mines (potentially spatially extensive and incredibly artefact-rich) and associated lithic processing and Neolithic settlement evidence (potentially spatially extensive extremely ephemeral).</p> <p>WSCC is not, therefore, able to agree with the Applicant's statement that updated C-225 and Requirement 19, Part (3) of the Draft Development Consent Order [REP2-002] sufficiently 'provides for mitigation by design through engineering responses'.</p>	<p>Where the loss of archaeological interest of a heritage asset is not avoidable through design, this would be partially mitigated through preservation by record before the loss occurs. The mitigation approach, as set out in the Outline Onshore Written Scheme of Investigation [REP3-035] (updated at Deadline 5), is to avoid or limit effects through detailed design measures first, and then resort to preservation by record, and the assessment in Chapter 25: Historic environment, Volume 2 of the Environmental Statement (ES) [REP4-024] was undertaken on this basis. The Applicant considers that the resulting residual effects are therefore fairly and accurately assessed in Chapter 25: Historic environment, Volume 2 of the ES [REP4-024].</p> <p>The Applicant makes reference to previous Development Consent Order (DCO) applications to demonstrate the appropriateness of the assessment methodology utilised in Chapter 25: Historic environment, Volume 2 of the Environmental Statement (ES) [REP4-024]. Recent previous examples which have followed very similar ES methodology with the same</p>

Ref	Deadline 4 submission	Applicant's response
	negative change for some assets from high to low is contested.	<p>consideration of embedded environmental measures are HyNet Carbon Dioxide Pipeline, Sizewell C nuclear new build and Yorkshire Green grid connection.</p> <p>For each of these, the historic environment assessments undertaken identified the effects on archaeological receptors in the absence of further mitigation (as set out in an Overarching Written Scheme of Investigation) and also considered the effect on archaeological receptors subsequent to further mitigation, whereby the archaeological interest of remains would be partially mitigated through appropriate investigation, recording and dissemination. Consideration of this mitigation in the assessment resulted in a change in the assessment, whereby the magnitude of change was reduced. However, where adverse change was assessed, the resulting effect still constituted harm to the archaeological receptors, as per the assessment methodology set out in the respective DCO application documents.</p> <p>No objections were made to the ES assessment methodology used in these DCO applications which were in line with relevant legislation and policy, and for which Historic England was a statutory consultee. The approach was accepted by the Examining Authority in each case. For example, the Examining Authority's Report for the HyNet Carbon Dioxide Pipeline confirmed agreement with this approach in paragraph 5.8.35, stating that "The ExA agrees the controlled and recorded removal of Bronze Age funerary archaeological remains would decrease the magnitude of impact from major to moderate". The Secretary of State's Decision Letter of 20 March 2024 notes the Examining Authority's conclusions in this regard. For the Yorkshire Green project, the approach to the use of embedded environmental measures was adopted, for example in consideration of potential effects on Marston Moor Registered Battlefield. This was agreed by Historic England and paragraph 3.12.33 of the Examining Authority's Report also confirms agreement. For the Sizewell C project, the Examining Authority's Report noted the applicant's approach at paragraphs 5.13.42 and 5.13.43 with respect to the Main Development Site, that "any significant deposits and features within the site, could be appropriately investigated, recorded and disseminated, thereby preserving the archaeological interest of remains" and confirmed agreement with this approach in paragraph 5.13.47.</p> <p>The same ES assessment methodology is used for Rampion 2 and is also in line with relevant legislation and policy as set out in Chapter 25: Historic environment, Volume 2 of the ES [REP4-024]. For further explanation, the Applicant refers back to the response in paragraph 6.7 of Table 2-1 Deadline 2 Submission – 8.49 Category 8: Examination Documents – Applicant's Response to Prescribed Consultees' Written [REP2-026]. It should also be noted that the mitigation approach, as set out in the Outline Onshore Written Scheme of Investigation [REP3-035] (updated at Deadline 5), is to avoid or limit effects through detailed design measures first, and then resort to preservation by record, and the assessment was undertaken on this basis.</p>
	Minerals	
MI 1.1	West Sussex County Council South Downs	<p>WSSC responded to MI 1.1 at Deadline 3 [REP3-073], setting out concerns, as the Mineral Planning Authority, on matters related to the safeguarding of minerals.</p> <p>The Applicant acknowledges the comments made by West Sussex County Council in regard to the meeting held on 23 April 2024 and agree with the key issues identified.</p>

Ref	Deadline 4 submission	Applicant's response
National Park Authority	<p>WSCC met with the Applicant following Deadline 3 to discuss the matters of concern and seek to address these. The key issues of concern, that have been set out to the Applicant, are that;</p> <ul style="list-style-type: none"> • Soft sand is the primary mineral of concern, however other safeguarded minerals must also be given due consideration. • Having read the Applicants response to MI1.1, WSCC recognise that a full details Mineral Resource Assessment may be difficult to complete and note the need to be proportionate, but matters that require clarification or updates remain. • Clarity from the Applicant on the way in which any encountered mineral resource will be managed, and appropriately secured, noting that minerals resources are different to waste material, which the MMP focuses on. The MPP should be updated to reflect how mineral resources will be managed. • Outline provisions of the MMP, regarding mineral safeguarding, should be set out in a revised version of the OCoCP • The Applicant should demonstrate that it meets the requirements of Policy M9 of the West Sussex Joint Minerals Local Plan (JMLP) (July 2018, Partial Review March 2021). The Applicant has not provided sufficient response on why it is not practical or environmentally feasible deliver full scale prior extraction, and the extent to which incidental extraction/reuse of minerals within the Project may be possible. <p>The Applicant indicated during ISH2 (Item 4d) that further detail will be submitted in to the Examination at Deadline 4. Related to this is Action 30 [EV5-018 - EN010117-001427-ISH2 Action Points.pdf (planninginspectorate.gov.uk)]. WSCC will respond further on matters related to mineral safeguarding when more information is submitted into the Examination.</p>	<p>The Applicant has provided responses to the further clarifications requested in relation to clarity over how minerals would be managed, outline provisions for the MMP are set out in the Outline Code of Construction Practice [REP4-043], and that the proposals meet the requirements of Policy M9 of the JMLP.</p> <p>These clarifications were provided at Deadline 4 principally within:</p> <ul style="list-style-type: none"> • Deadline 4 Submission – 8.66 Applicant's Comments on Deadline 3 Submissions Revision A [REP4-070]. <p>Further clarification has also been provided within</p> <ul style="list-style-type: none"> • Outline Code of Construction Practice [REP4-043]; • Deadline 4 Submission – 8.70 Applicant's Response to Action Points Arising from Issue Specific hearing 2 and Compulsory Acquisition Hearing 1 Revision A [REP4-074]; and • Deadline 4 Submission – 8.77 Applicant's Response to Stakeholder's Replies to Examining Authority Written Questions Revision A [REP4-079].
Noise and Vibration	NV 1.2 The Applicant	<p>WSCC do not agree with the methodology of only considering PRoW that are 'particularly quiet or important' (and note no methodology used to determine this has been specified). All PRoW are</p> <p>The Applicant maintains that there are no significant noise and vibration effects on Public Rights of Way (PRoWs) or their users. The effects are temporary in the case of construction activity or for operation and maintenance noise, the magnitude of noise from substations will not give rise to significant effects and users of the PRoWs will not be resident within the zone</p>

Ref	Deadline 4 submission	Applicant's response
NV 1.4	The Applicant	<p>considered important outdoor leisure areas. Previous concerns raised by WSCC relating to noise impacts on PROW users remain the same.</p> <p>No reference to any monitoring of offshore construction noise has been provided in the ONVMP.</p>
<p>Seascape, Landscape and Visual</p>		
SLV 1.6	The Applicant	<p>of influence for noise for any length of time that would give rise to undesirable noise exposure.</p> <p>The Applicant recognises that the Deadline 3 Submission – 8.54 Applicant's Responses to Examining Authority's First Written Questions (ExQ1) [REP3-051] identified that the offshore noise monitoring would be further considered in the Outline Noise and Vibration Management Plan [REP3-054]. However, the Outline Noise and Vibration Management Plan [REP3-054] does not contain proposals for offshore construction noise monitoring, and instead addresses the potential for adverse offshore construction noise generation, through the application of the Outline Complaint Procedure in Chapter 6.</p> <p>The Applicant notes that the Outline Construction Communications Plan (Document Reference: 8.86) has been submitted at Deadline 5. The Outline Construction Communications Plan (Document Reference: 8.86) sets out the overarching communications plan for construction of the Proposed Development, outlining The Applicant's commitments with regards to the communication methods and materials which will be employed to reach and inform communities local to the Rampion 2 project, who may have an interest in the construction plans. Section 7 within the Outline Construction Communications Plan (Document Reference: 8.86) outlines the complaints procedure.</p> <p>It is acknowledged that there has been an evolution in offshore design and reduction in offshore DCO Limits prior to submission, which has been welcomed by WSCC. However, the iterative changes to the design of the offshore elements has not resulted in a major reduction to the potential visual effects upon West Sussex receptors. Without any willingness to engage with WSCC regarding further development of offshore design principles which would lead to a lesser environmental impact, there are areas of disagreement with the Applicant on these matters.</p>
<p>Traffic and Access</p>		
TA 1.2	West Sussex CC and National Highways	<p>Please see the Applicant's response to this point at 7.6 of the Deadline 2 Submission – 8.43 Category 8: Examination Documents - Applicant's Responses to West Sussex County Council Deadline 1 Submissions [REP2-020]. The Applicant considers it has aimed to minimise harm of the offshore proposals during the design of the Proposed Development and confirms that no further mitigation is possible to reduce assessed significant visual effects arising from the Wind Turbine Generators (WTGs) within the array area.</p> <p>There doesn't appear to be a response from the Applicant on this matter.</p> <p>WSCC would repeat that there doesn't appear to be any further information in terms of the calculation of construction vehicle movements associated with the proposals. WSCC recognise that there will be some quite detailed calculations</p> <p>The construction traffic calculations used within Appendix 23.2: Traffic Generation Technical Note, Volume 4 of the Environmental Statement (ES) [REP3-021] (updated at Deadline 5), Chapter 23: Transport, Volume 2 of the ES [APP-064] and Chapter 32: ES Addendum, Volume 2 of the ES [REP1-006] (updated at Deadline 5) are based on the Proposed Development's outline design to date. Due to this, a highly conservative approach has been taken to assess the worst-case scenario for potential traffic impacts. The traffic calculations are sensitive to certain activities, for example the construction of temporary accesses and haul roads along the onshore cable corridor will require the import and then</p>

Ref	Deadline 4 submission		Applicant's response
		<p>undertaken by the Applicant to produce the traffic movement estimates within the various documents.</p> <p>However there still remains ambiguity in terms of what assumptions are being applied with a prime example in 6.1.4. This references estimate being based against 'conservative set of assumptions based on best available information', but then 'the final arrange of construction works, and precise methods used will be determined during the detailed design stage...these factors will influence the number of vehicle movements'. WSCC consider this matter to remain outstanding.</p>	<p>export (on reinstatement) of stone for the temporary surface. For these activities conservative values have been used to determine the traffic volumes.</p> <p>In the case of the temporary construction accesses and haul roads, a conservative average 6m width has been assumed to calculate the volume of stone and therefore the associated Heavy Goods Vehicle (HGV) movements. The width of a large proportion of the temporary construction accesses and haul roads will be less than this and include appropriately spaced passing places. It is noted that construction and reinstatement of temporary construction accesses and haul roads account for one third of all HGV movements on public roads (onshore cable route and substation). Therefore, a reduction in average width will impact the HGV movements across the Proposed Development.</p> <p>Stone volumes required for the base of the temporary construction compounds are calculated on the compound areas presented in the works plans at each location. The size of each compound will be smaller than these allocated areas (which also allow for soil storage, drainage etc).</p> <p>The same conservative approach has been taken with Light Goods Vehicles (LGVs). Workers travelling to site are assumed to travel to the compounds individually (1 occupant per car) and then travel 5 occupants per minibus to site. However, car sharing and even hotel pickups are common practice and the Applicant will seek to promote this to reduce the number of light vehicle journeys across the Proposed Development. During detailed design the traffic volumes will be able to be refined taking into account detailed design of crossings, the exact onshore cable route, known Contractor equipment, manpower requirements and required compound sizes.</p> <p>The Applicant is confident that the traffic volumes calculated and used within Appendix 23.2: Traffic Generation Technical Note, Volume 4 of the ES [REP3-021] (updated at Deadline 5), Chapter 23: Transport, Volume 2 of the ES [APP-064] and Chapter 32: ES Addendum, Volume 2 of the ES [REP1-006] (updated at Deadline 5) are robust and that refinement will reduce the traffic numbers.</p>
TA 1.3	The Applicant	The position concerning Abnormal Indivisible Loads and Shoreham Port is noted. As the Applicant states the routing of AILS is controlled by separate legislation through which WSCC will be notified of any forthcoming movements. This matter is therefore dealt with separately. No further action is required.	The Applicant welcomes West Sussex County Council's acknowledgement that the routing of Abnormal Indivisible Loads (AILS) is controlled by separate legislation through which West Sussex County Council will be notified of any forthcoming movements. The Applicant agrees with West Sussex County Council that no further action is required.
TA 1.4	The Applicant	The Kent Street traffic management proposals are contained within the Outline Construction Traffic Management Plan Revision D. WSCC has provided comments on this within their Deadline 3 representation.	The Applicant notes responses to West Sussex County Council's comments with respect to the traffic management proposals for Kent Street and Michelgrove Lane (Appendix D within the Outline Construction Traffic Management Plan [REP4-045]) are provided above (references 2.1.67 to 2.1.88).

Ref	Deadline 4 submission	Applicant's response
TA 1.6	The Applicant	The Michelgrove Lane traffic management proposals are contained within the Outline Construction Traffic Management Plan Revision D. WSCC has provided comments on this within their Deadline 3 representation.
TA 1.8	West Sussex CC	<p>There is no response from the Applicant on this point. It is however recognised that the Applicant intends to provide further information for agreed accesses (i.e. construction compounds and the substation) through the examination process.</p> <p>A specific point was raised regarding A-24. A-24 has now been confirmed as an operational access only, thereby resolving the point raised previously by WSCC.</p> <p>This question is partly addressed with there being further information to be submitted by the Applicant.</p>
Terrestrial Ecology		
TE 1.5	The Applicant Natural England The Environment Agency Horsham DC	<p>Meadows at Cratemans Farm are clearly of nature conservation value, regardless of whether they qualify as lowland meadow priority habitat. It is thus reassuring that semi-improved grassland will be subject to National Vegetation Classification surveys during the detailed design phase, as stated in paragraph 4.6.1 of the OLEMP Rev. B [REP3-037]. These surveys must inform any reinstatement. New Commitment C-294, relating to habitat surveys to inform the detailed design process and BNG calculations, is welcomed. New Commitment C-292 is also welcomed, ensuring that the mitigation hierarchy is applied at detailed design, and that the Ecological Clerk of Works is involved in providing advice to the design engineers at each crossing of sensitive habitats.</p>
TE 1.6	The Applicant	<p>The Woodland Retention Plan, Figure 7.2.2h (B) of the OCoCP [REP3-024], identifies the area of deciduous woodland status within the National Grid Bolney substation as being retained (ref. W3713). This finding is contrary to that stated within the Applicants response, as well as plans shown within inset 45 of the Arboricultural Impacts Plan found</p>

Ref	Deadline 4 submission		Applicant's response
TE 1.7	The Applicant	<p>within the Arboricultural Impact Assessment [APP-194], as well as what can be achieved within the indicative plan for the AIS extension option without adverse impact (as shown within the Design and Access Statement [REP3-012]). Therefore WSCC remains unsatisfied that the impact on deciduous woodland, a priority habitat, are at all clear at this location.</p>	<p>The Applicant notes the comment but is of the view that all constraints were considered and that the positioning of the onshore substation footprint was governed by a large number of factors including visual impacts, flood risk, noise, transport and biodiversity, as well as engineering considerations.</p>
TE 1.8	The Environment Agency Southern Water	<p>WSCC acknowledges that the Applicant has reduced the working corridor to a 23m width, however, this alone is not recognised as 'exceptional' mitigation. The Applicant has responded suggesting a targeted risk assessment for the construction phase has been carried out for this location, though it would appear this has not assessed trenchless methodologies as a possible option. Southern Water Services have provided a response [REP3-130], which is not dismissive of alternate construction methodologies, subject to a specific Hydrogeological Risk Assessment (HRA). What is not clear is whether Southern Water Services and the Environmental Agency have been presented with other forms of construction methodology as an option at this location, such as trenchless crossing (HDD), alongside a quantifiable risk. This has not been included within the examination documents, therefore WSCC do not feel that an acceptable and proportionate level of mitigation (in context to the scale of the Project) has been provided given the resulting indirect impacts on the two surrounding ancient woodlands by severing connectivity, as well as suitable protection of this important tree line situated within the SDNP.</p>	<p>The Applicant covered this matter in the response to West Sussex County Council's Deadline 3 submission within Deadline 4 Submission – 8.66 Applicant's Comments on Deadline 3 Submissions [REP4-070]. In its Deadline 4 submission, Southern Water [REP4-126] has since provided further comment on this point and stated that it can confirm that it would find trenchless excavation in the Olivers Copse area problematic due to the hydrogeological sensitivity of the area and the proximity to its groundwater abstraction. Southern Water also further clarified in its Deadline 4 submission [REP4-126] that the trenchless crossing method has greater risk than an open cut method at this particular location.</p> <p>This knowledge and understanding is consistent with the relevant parts of the Appendix 26.4: Hydrogeological Risk Assessment, Volume 4 of the Environmental Statement (ES) [APP-218] that covers potential receptors, hydrogeological pathways and conceptual models in the vicinity of Kitpease Copse area and emphasises the key sensitivities in that locality. Also, the types of potential effects from trenchless crossing works are also documented elsewhere within the Appendix 26.4: Hydrogeological Risk Assessment, Volume 4 of the ES [APP-218] and further aid that understanding.</p> <p>A mitigation hierarchy has been appropriately followed in relation to both the water environment and biodiversity to ensure that a proportionate and balanced approach has been taken. The selection of an open cut rather than a trenchless crossing is part of this mitigation. Due to the highly sensitive nature of the hydrogeological conditions, open cut has also been selected as the most appropriate crossing methodology at Kitpease Copse.</p> <p>Although there was not a further request made by the Examining Authority within the Action Points arising from Issue Specific Hearing 2 (ISH2) [EV5-018], the following points provide a summary of the key points of the risk assessment in relation to this matter.</p>

Ref	Deadline 4 submission	Applicant's response
	<p>WSSC await further response from the Applicant following a request from the ExA at the ISH (item 4e, 15th May 2024) for further specific details regarding this issue through a post hearing written submission.</p>	<p>Potential risk pathways are documented in paragraphs 5.2.2 – 5.2.4 of Appendix 26.4: Hydrogeological Risk Assessment, Volume 4 of the ES [APP-218].</p> <p><i>“The main contaminant and sediment risk pathway is from the surface to the natural Chalk system by vertical flow in the unsaturated zone and lateral flow in the saturated zone. The thin soils present and exposed Chalk do not retain pollutants and sediments such that downward flow can occur into the unsaturated zone and ultimately to the water table. The Chalk is a dual porosity system which means that although it has many rapid pathways (fissures) available for contaminants and sediments to travel along, the bulk of the water present is within the matrix. In the saturated zone contaminants can move very rapidly and across long distances through fissures (karstic flow) and more slowly within the matrix by diffusion. The presence of extensive fissuring also provides the pathway for the transmission of excavation dewatering impacts.”</i></p> <p>Furthermore:</p> <p><i>“Additional risk pathways can be created by the proposed works. For instance, incorrectly constructed and sealed deep HDD may result in additional vertical pathways within the unsaturated zone that can intersect existing fractures and karstic features.”</i></p> <p>Potential effects are identified in Table 5-1 of Appendix 26.4: Hydrogeological Risk Assessment, Volume 4 of the ES [APP-218]. This identified on-site sources and pathways that have the potential to cause effects during construction. Trenchless crossing activities were also identified in that table.</p> <p>The potential impacts and serious consequences from a trenchless crossing are clearly of higher potential significance than open cut due to potentially large-scale disruption and impacts on the quantity and / or quality of a regionally important water supply in a populated and water stressed area. Tables 5-2 to 5-4 of Appendix 26.4: Hydrogeological Risk Assessment, Volume 4 of the ES [APP-218] present a range of criteria for likelihood, consequences and risk matrix. Trenchless crossing would be anticipated to increase the likelihood, consequence and resultant risk at the Kitpease Copse crossing beyond that of the Applicant's design for open cut proposals. This is on the basis that drilling activities are likely to increase the potential for interception of existing fractures and karstic features that are known to provide rapid pathways for contaminants, which when combined with the serious consequences of disruption to a regionally important water supply could lead to a potentially significant effect.</p>
TE 1.9	The Applicant	<p>The response is acknowledged, yet vegetation removal plans within the OCoCP [REP3-025] fails to recognise the hedgerow and tree lines being present.</p>
TE 1.14	The Applicant	<p>The revised wording of Commitment C-208 to explicitly include destructive search techniques for reptiles in all areas of suitable habitat affected by</p>

Ref	Deadline 4 submission		Applicant's response
		construction activities, not just the cable route, is welcomed.	destructive search techniques for reptiles in all areas of suitable habitat affected by construction activities, not just the onshore cable route.
TE 1.17	The Applicant Horsham DC Natural England The Environment Agency	New Commitment C-296 to protect migrating toads in the Cowfold area is welcomed.	The Applicant acknowledges West Sussex County Council's welcoming of the new commitment C-296 (Commitments Register [REP4-057]).
TE 1.27	The Applicant	WSSCC support the comments provided by Ian Howell from Barton Hyett Associates and acknowledge the Applicant's response. It is not clear if the design principles presented within the Design and Access Statement [REP3- 012] would aim to minimise losses to trees within the site as the Applicant is suggesting could happen through micro-siting.	The Applicant notes that commitment C-292 (Commitments Register [REP4-057]) will see the implementation of the mitigation hierarchy during the detailed design stage. This will seek to minimise tree loss across the entire proposed DCO Order Limits.
TE 1.29	Natural England	New Commitment C-292 is welcomed. This ensures that the mitigation hierarchy is applied at detailed design, and that the Ecological Clerk of Works is involved in providing advice to the design engineers at each crossing of sensitive habitats.	The Applicant acknowledges West Sussex County Council's welcoming of the new commitment C-292 (Commitments Register [REP4-057]).

2.2 Parish Councils

Table 2-5 Applicant's comments to Bolney Parish Council's Deadline 4 submissions

Ref	Deadline 4 submission	Applicant's comments
2.5.1	Bolney Parish Council would comment on the following documents submitted by the Applicant to Deadline 3: Outline Landscape and Ecology Management Plan REP3-037 and Design and Access Statement REP3-013: In Commitment C-254 in the Commitment Register REP-049, the Applicant commits to a detailed landscaping plan to screen the extension to the National Grid substation.	Noted, the Applicant has provided a response to the comments raised below.
2.5.2	<p>In their Written representations REP3-070, both Mid Sussex District Council and the MSDC Conservation Officer expressed their concerns about the impact of the extension of the National Grid substation on the users of the Public Right of Way to the east of the substation and on the Listed Building to the north of the substation. Despite the concerns expressed by MSDC and the Conservation Officer, the Applicant has failed to include any proposed landscaping to the north of the National Grid substation as demonstrated in Appendix C of the Design and Access Statement REP3-013 (showing the indicative landscaping plan for the GIS and AIS extension options) and the Outline Landscape and Ecology Management Plan REP3-037. This is despite the fact that a section of hedgerow, which currently helps screen the extension site from the Listed Building and other residential properties to the north, will potentially be removed to make way for the underground connecting cable from the new Rampion 2 substation at Oakendene and the National Grid substation extension. See Figure 7.2.6n in Appendix B to the Outline Code of Construction Practice REP3-025.</p> <p>Bolney Parish Council asks that the Applicant revise the landscaping plan to ensure that it meets its Commitment C-256 and that its landscaping plans will adequately screen the extension of the National Grid substation from the nearby PRow, Listed Building and residential properties to the north of the site in the Parish of Bolney.</p>	<p>The Applicant has provided a response to Mid Sussex District Council's submission [REP3-070] regarding concerns about the impact of the existing National Grid Bolney substation extension on users of the Public Right of Way and Coombe House Grade II Listed Building at Deadline 4 and is awaiting Mid Sussex District Council's response, see Table 2-6 in Applicant's Response to Stakeholder's Replies to Examining Authority's Written Questions [REP4-079]. This response is included below for clarity:</p> <p><i>"The Applicant agrees with the Council Conservation Officer's description of the significance of Coombe House Grade II Listed Building and agrees that it is well screened by surrounding vegetation. It is further agreed that intervening vegetation ensures that there is no intervisibility between Coombe House and the existing National Grid Bolney substation extension site.</i></p> <p><i>Appendix D of the Design and Access Statement [REP3-013] illustrates the retention of vegetation within land between the existing National Grid Bolney substation extension site and Coombe House, which will maintain screening.</i></p> <p><i>Appendix 22.16: Arboricultural Impact Assessment, Volume 4 of the Environmental Statement [APP-194] (updated at Deadline 4), Annex B Inset 45 of 47 shows that existing vegetation between the existing National Grid Bolney substation extension site and Coombe House consists of ancient woodland, which will be retained along with Category B Trees and Hedgerows to also be retained. There is also an existing hedgerow and tree belt surrounding Coombe House in the direction of the existing National Grid Bolney substation extension site which will limit outward views from the house toward the substation site."</i></p> <p>The Applicant assumes that commitment C-256 (Commitments Register [REP4-057]) referenced by Bolney Parish Council which relates to the successful reinstatement of soil over shallow chalk has been erroneously referred to and that commitment C-254 was intended. As per the response above, the Applicant is satisfied that the existing landscaping plans meet commitments C-82 and C-254 (Commitments Register [REP4-057]) and no further changes are required.</p> <p><i>C-82: Any significant effects on heritage assets, arising through change to setting, will be mitigated as far as possible through sensitive design, landscape planting or screening.</i></p> <p><i>C-254: A detailed landscape plan will be developed in agreement with NGET for the screening of the extension works to the National Grid Bolney Substation in accordance with the further</i></p>

Ref	Deadline 4 submission	Applicant's comments
2.5.3	<p>Outline Construction Traffic Management Plan REP3-029 and Outline Construction Workforce Travel Plan REP3-031: Bolney Parish Council notes that the Outline Construction Traffic Management Plan REP3-029 proposes a Traffic Management Strategy for Kent Street which includes reducing the speed limit on the A272/Cowfold Road through the Parish of Bolney from the junction with the A23 to Cowfold and the use of banksmen at the junction of Kent Street and the A272.</p> <p>The Parish Council is concerned that proposed strategy may result in congestion on the A272, particularly with banksmen interrupting traffic on the A272 to allow HGV traffic in and out of Kent Street. The experience of the Parish Council is that any congestion on the A272 results in traffic seeking alternative routes from the A23 either by exiting the A23 at the Hickstead junction to the south of the A272 junction, or at the Broxmead Lane exit to the north of the A272 junction. Traffic then uses the narrow, single track, rural back lanes in the Parish to find an alternative route to their destination without using the A272.</p> <p>In its written representation REP1-074, Bolney Parish Council asked the Applicant to consider specifically identifying five rural lanes in the Parish in its Outline Construction Traffic Management Plan as being prohibited from use by any construction traffic associated with the Rampion 2 project, being The Street, London Road north of the A272 junction exit roundabout from the northbound A23, Bolney Chapel Road, Foxhole Lane and Spronketts Lane. In its representations REP2-14, at paragraph 1.11, the Applicant said it was considering the Parish Council's request to 'prohibit use of the rural roads by all construction traffic (including HGVs and LGVs) as outlined in Bolney Parish Council's Written Representations'.</p> <p>REP3-029 is the Applicant's revised Outline Construction Traffic Management Plan. The revised document does not identify the five lanes in the Parish as being prohibited from use but simply states that the '<i>HGV Strategy has avoided the use of small single-track roads as much as possible</i>'. The Parish Council questions whether this wording is adequate. Further, although the OCTMP identifies several key settlements by name which will be avoided by construction traffic, the Applicant has failed to include the village of Bolney in the list. The Parish Council would ask that Bolney be added to this list and that the five rural lanes in the Parish be specifically named in the OCTMP as being prohibited from use by HGVs in any circumstances.</p> <p>REP3-031 is the Applicant's revised Outline Construction Workforce Travel Plan. This has been amended and now states that the Travel Information Pack which the Applicant will prepare to issue to the workforce will '<i>advise those driving to the site of recommended routes to avoid the use of narrow unclassified rural roads, where possible</i>' [emphasis added]. Bolney Parish Council contends that this wording is wholly inadequate and falls short of the Applicant's response in REP2-14. Again the Parish Council would ask that the Outline Construction Workforce Plan be amended to specifically name the five rural lanes in the Parish as being prohibited from use by LGVs and construction workers.</p>	<p><i>principles and indicative landscape design included in the Design and Access Statement. The detailed landscape plan will be provided to Mid-Sussex District Council for approval.</i></p> <p>The Applicant can confirm that an updated version of the Construction Accesses A-26, A-28, A-61, and A-64 Traffic Management Strategies is included within Appendix D of the Outline Construction Traffic Management Plan [REP4-045] (updated at Deadline 5). As part of this strategy the Applicant can also confirm that it is not the intention to use banksmen on the A272 to support the movement of construction vehicles into and out of the junction with Kent Street. The proposed widening of Kent Street at the junction with the A272 and proposed traffic management strategy, as detailed within Appendix D of the Outline Construction Traffic Management Plan [REP4-045] (updated at Deadline 5), instead allows construction vehicles to enter / exit Kent Street unaided.</p> <p>The Outline Construction Traffic Management Plan [REP4-045] provides details of construction traffic routes for the Proposed Development. The strategy for HGV traffic includes the use of strategic elements of the highway network (A27 and A23) as far as possible before routing onto the local highway network (using only routes as shown in Figures 7.6.5 and 7.6.6 in Appendix B of Outline Construction Traffic Management Plan [REP4-045]). Construction traffic routes that form part of the local highway network also use West Sussex County Council's prescribed Lorry Route Network wherever possible. Section 8.4 of the Outline Construction Traffic Management Plan [REP4-045] outlines how construction routes and the Delivery Management System will be communicated with the construction workforce and delivery drivers.</p> <p>It is also noted that the Applicant will employ a Delivery Management System (DMS) during construction of the Proposed Development to control all construction HGV and LGV movements associated with the onshore elements of the Proposed Development and the timing of deliveries to site and minimise the number of construction vehicles on the road, particularly during peak periods. This proposed DMS is detailed in Section 8.4 of the Outline Construction Traffic Management Plan [REP4-045] and is consequently secured by Requirement 24 of the Draft Development Consent Order [REP4-004].</p> <p>The Applicant has provided additional text within Section 4.11 of the Outline Construction Traffic Management Plan [REP4-045] (updated at Deadline 5) on guidance that will be provided to construction workers and third-party suppliers making deliveries on routes which should not be used by construction traffic (both HGVs and LGVs) associated with the Proposed Development. This list of routes includes the five lanes that Bolney Parish Council have requested (The Street and London Road north of the A272, Bolney Chapel Road, Foxhole Lane, and Spronketts Lane). The construction workforce will be made aware of these routes through Travel Information Packs that accompanies the detailed Construction Workforce Travel Plan that the Contractor will provide to the construction workforce outlined in the Outline Construction Workforce Travel Plan [REP3-031]. In addition, the Transport Coordination Officer will be responsible for informing third party suppliers of unsuitable routes when booking in deliveries for the Proposed Development as part of the DMS. This is secured through Requirement 24 of the Draft Development Consent Order [REP4-004].</p>

Table 2-6 Applicant's comments to Clymping Parish Council's Deadline 4 submissions

Ref	Deadline 4 submission	Applicant's comments
2.6.1	1. Clymping Parish Council welcomed the opportunity to contribute to the Open Hearing 2 and Issue Specific Hearing 2.	Noted, the Applicant has provided a response to the comments raised below.
2.6.2	2. The Parish Council remains very concerned about the noise, vibration, dust, air quality and visual impacts of the Works Compound 10 and the works to the south of Ferry Road on the sensitive receptors in the village including Climping Park, Clymping Village Hall and Playing Fields, St Mary's Primary school and local residential areas including Clymping Mill. We would expect Littlehampton Town Council to have similar concerns about the impact on residents and businesses on the River Arun west bank. We request greater detail on the lay out and operation of the proposed construction facilities so that we have a far better appreciation of the impact on the village before a Development Consent Order DCO is granted. We would also like to understand what say the local planning authority will have on the detailed proposals if DCO is granted.	Please see the Applicant's response regarding the concerns raised in reference 2.1.4 below.
2.6.3	<p>3. We note the use of "temporary" throughout the documentation with reference to the construction phase. We feel this grossly understates the impact on the many elderly residents of Climping Park for whom 4 years could be a significant part of their remaining lives. We also recognise this is an estimate but noted the experiences of other parishes affected by Rampion 1 of extended overruns. We suspect the applicant is expecting free and easy access to the Clymping Compound and the area south of Ferry Road but see point 13 below.</p> <p>4. We would like to understand the confidence limits applied to these project timing estimates and the steps the applicant will take to ensure no project over-runs.</p>	<p>As stated in Chapter 5: Approach to the EIA, Volumes 2 of the ES [APP-046], the temporal scope refers to the time periods over which impacts and effects may be experienced by sensitive receptors which may be permanent, temporary, long term or short term. This has been established for each aspect in discussion with relevant consultees. The EIA assesses effects during the construction, operation and maintenance, and where appropriate, decommissioning phases of the Proposed Development.</p> <p>The developer of Rampion 2, RWE, is a leading offshore wind company with many projects around the world. RWE utilises robust contracts and continues to learn from previous construction projects to ensure project delivery is met on time. The grid connection agreement is for 2029-30 and the Applicant plans to be fully operational by the end of this decade to contribute to the UK target for a five-fold increase in offshore wind capacity by 2030.</p> <p>The EIA submitted in the Environmental Statement for Rampion 2 is based on parameters for the Rampion 2 development. An indicative construction programme for Rampion 2 is provided in Graphic 4-24 of Chapter 4: The Proposed Development, Volumes 2 of the ES [APP-045].</p> <p>The final construction programme will be determined during the detailed design phase post-consent. Schedule 1, part 3, requirement 10 of the Draft Development Consent Order [REP4-004] secures that the detail of the stages (equivalent to phases) of works are to be submitted and approved by the relevant planning authorities.</p>
2.6.4	<p>5. We note the listings of construction equipment in document 6.4.21.2 many of which are very significant noise and dust and pollution generators including the concrete batching plant. These will have a significant impact on the amenity of residents and community facilities contrary the Clymping Neighbourhood Plan policy CPN 1 "Protect Community Facilities".</p> <p>6. We feel that there should be a formal commitment, within the Commitments Register, to monitoring noise, vibration and air pollution on an ongoing basis, linked to an accessible communication and complaints procedure to ensure that:</p> <ul style="list-style-type: none"> the impacts can be managed and minimised, 	<p>5. Volume 2 of the Environmental Statement [APP-042 to APP-072] has assessed the effects of the Climping compound during the construction phase. Though impacts will arise, there are no significant effects arising from noise, dust, ecology, settlement/residential areas, Public Rights of Way access and traffic impacts when considering the embedded environmental measures secured in the Outline Code of Construction Practice [REP4-043], the Outline Construction Traffic Management Plan [REP4-045] and Outline Public Rights of Way Management Plan [REP3-033]. The Applicant acknowledges that there will be significant landscape and visual effects associated with the presence of the Climping compound on the local landscape character including views from the Climping Caravan Site. These will be temporary and limited by retention of the perimeter vegetation along the A259. Where removal is required (as per the Outline Vegetation Retention and Removal Plan (Document Reference: 8.87)),</p>

Ref	Deadline 4 submission	Applicant's comments
	<ul style="list-style-type: none"> the occurrences of statutory nuisance events are acted on quickly and efficiently. the operations of the contractors are effectively managed. <p>7. The visual impact of the Clymping Compound, the works south of Ferry Road and the lighting proposed for both will be significant in the open landscape. We note equipment heights of up to 7m and, in particular, the concrete batching plant 20m in height that will dominate the views.</p> <p>We want to understand what steps the applicant proposes to undertake to minimise the impact in terms of screening and layout, especially with regards to Climping Park. We have similar concerns for the impacts south of Ferry road in relation to the integrity of the gap between Settlements (Arun Local Plan Policy SD SP3) and impacts on the school and residents in the area including Clymping Mill.</p>	<p>this will be temporary as per the commitment to reinstatement in the Outline Landscape and Ecology Management Plan [REP4-047] is considered. The Applicant has updated commitment C-33 (Commitments Register [REP4-057]) at Deadline 5 to provide further clarity around screen fencing at the temporary construction compounds to minimise the temporary disturbance during the construction stage. Each of the above plans will be subject to submission of stage specific details for approval (including the stage specific Code of Construction Practices and stage specific Landscape and Ecology Management Plans to Arun District Council who will also be consulted on the stage specific Construction Traffic Management Plans and stage specific Public Right of Way Management Plans (for approval by West Sussex County Council)). These are secured through Requirements 12, 20, 22, and 24 in the Draft Development Consent Order [REP4-004].</p> <p>6. Section 5.3 and 5.4 of the Outline Code of Construction Practice [REP4-043] describe the practical measures to be implemented to reduce the impact of air quality and onshore noise and vibration measures during the construction phase. The Outline Air Quality Management Plan [REP3-056] and Outline Noise and Vibration Management Plan [REP3-054] set out the management and mitigation measures related to air quality and onshore noise and vibration that will apply to all works carried out within the onshore part of the proposed DCO Order Limits. The stage specific Air Quality Management Plans and stage specific Noise and Vibration Monitoring Plans will be shared for approval of the relevant planning authority as part of the stage specific Code of Construction Practice. This is secured via Requirement 22 within the Draft Development Consent Order [REP4-004].</p> <p>Further to this, the Applicant has included two additional commitments (C-302 and C-303) in the Commitments Register [REP4-057] at Deadline 5 for the monitoring of noise and air quality during construction:</p> <p><i>“C-302 – The requirement for noise and vibration monitoring during construction shall be identified on a stage specific basis and agreed with the relevant planning authority. Where required the stage specific NVMP shall provide the details of noise and vibration monitoring including identification of sensitive receptors, ongoing continuous monitoring and form and frequency of reporting. The stage specific NVMP shall be submitted to and approved by the relevant planning authority.</i></p> <p><i>The scheme shall be developed by suitably qualified persons and shall include suitable trigger levels in accordance with the “ABC method” (Table E.1) of BS 5228: 2014 +A1:2019 “Code of practice for noise and vibration control on construction and open sites – Part 1: Noise”. The stage specific NVMP will provide remedial actions including review of mitigation should trigger levels be reached.</i></p> <p><i>C-303 – Where medium risk construction sites have been identified in Table 2-2 of the Outline AQMP the nature, frequency and locations of site monitoring including any necessary baseline will be discussed and agreed with the relevant planning authority to allow adequate time to collect baseline prior to commencement of works at those sites.”</i></p> <p>The Applicant has submitted the Outline Construction Communications Plan (Document Reference: 8.86) at Deadline 5, this document furthers the information provided in Section 2.6 of the Outline Code of Construction Practice [REP4-043] and provides an overview of the community liaison approach during the construction phase in and states that the Applicant will produce detailed Construction Communications Plans prior to the commencement of construction for approval with the relevant planning authorities. This is secured through Requirement 22 of the Draft Development Consent Order [REP4-004] (updated at Deadline 3).</p>

Ref	Deadline 4 submission	Applicant's comments
		<p>7. Further details of temporary construction compounds will be developed during the detailed design phase of the Proposed Development. The Applicant will be liaising closely with the local authorities post consent and the content of the plans will be directed by the detailed design for the works which will have been subject to consultation and approval. The Applicant considers that the details sought for the compounds comprising Work No.10 are secured through the detailed Construction Method Statements and stage specific Code of Construction Practice (see section 2.5 of the Outline Construction Method Statement [APP-255], and paragraph 4.3.5 of the Outline Code of Construction Practice [REP4-043]. Further to this, the Applicant has updated Commitment C-33 (Commitments Register [REP4-057]) at Deadline 5 to provide further clarity around measures that will be included to minimise the temporary disturbance during the construction stage:</p> <p><i>C-33 – Stage specific CoCPs will include measures to minimise temporary disturbance to residential properties, recreational users and existing land users. It will include details of measures to protect these receptors including the use of screen fencing at the temporary construction compounds to contribute to minimising visual and noise impacts.</i></p>
2.6.5	<p>8. The applicant should note that the Construction Method Statement for the Strategic Housing development on the land to the west of Church Lane CM/6/24/DOC envisages the realignment of Church Lane and the removal of the tree canopy on the eastern side of the current Church Lane south of Field Place as part of the first phase of the development. This will leave the Climping Compound/Work Area 10 unscreened from Church Lane.</p>	<p>The 300 house development project referenced was included as part of the cumulative effects assessment within the ES where relevant (Chapter 6: Coastal processes, Volume 2 [APP-047] to Chapter 29: Climate change, Volume 2 of the Environmental Statement [APP-070]), this development is referred to as ID13 (CM/48/21/RES).</p>
2.6.6	<p>9. The Natural England Agricultural Land Classification shows Climping Compound/ to be on high grade agricultural land: Grade 2. This use could be contrary to Neighbourhood Plan Policy CPN 10 Protection of High-Grade Agricultural Land. We note that Commitment C27 only provides for “reasonable” reinstatement. What is considered “reasonable” after the fact would depend on the operations undertaken by the contractors during the construction period and who is judging it. We feel that Commitment C27 should be consistent with the wording of Commitment C7 which requires the applicant to ensure reinstatement of agricultural land on the cable route to its original grade classification. The applicant and their contractors should respect the use of this land for the compound. If not, the landscape will be permanently scarred and the construction phase hardly “temporary”.</p>	<p>The Applicant is committed to full soil and agricultural land classification (ALC) survey coverage during pre-construction (see commitment C-183 in Table 20-17 within Chapter 20: Soils and agriculture, Volume 2 of the Environmental Statement (ES) [APP-061]), the results of which will inform the stage specific Soil Management Plans (SMPs) and Materials Management Plans (MMPs) to be produced post-DCO award during pre-construction.</p> <p>The measures to manage the impact on soil resources and 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 [REP4-004] and the Outline Landscape and Ecology Management Plan [REP4-047] pursuant to Requirement 12 of the Draft Development Consent Order [REP4-004]. The Applicant has updated the Outline Code of Construction Practice [REP4-043] 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.</p> <p>The use of the as far as reasonably possible is reasonable in this regard insofar as the exact same condition may not be achievable. The Applicant notes that reinstatement will still be subject to the requirements of management plans including the Outline Landscape and Ecology Management Plan [REP4-047] (updated at Deadline 5), secured by Requirement 12 in the Draft Development Consent Order [REP4-004] (updated at Deadline 5).</p>

Ref	Deadline 4 submission	Applicant's comments
2.6.7	10. The Construction Transport Management Plan shows route to Access A05/ Climping Compound as via the A284, A259 and Church Lane. We feel there should be a formal commitment within the Commitments Register to ensure construction traffic does not filter south from the A27 through Yapton and Ford to approach Access A05 from the north.	The Applicant has provided a response to the Examining Authority's Written Question regarding a potential additional commitment around this matter, please see reference CR 2.5 in Applicant's Response to Examining Authority's Written Questions (Document Reference: 8.81) .
2.6.8	11. We welcomed the verbal commitment for construction traffic not to use Crookthorn Lane or Brookpit Lane given during Specific Issue Hearing 2. We want to see this formalised as a new commitment in the Commitments Register.	<p>The Applicant has provided a summary of the oral position regarding use of Brookpit and Crookthorn Lanes for construction traffic at Issue Specific Hearing 2, see Agenda Item 7: Traffic and Access in Applicant's Post Hearing Submission – Issue Specific Hearing 2 [REP4-072].</p> <p>The Outline Construction Traffic Management Plan [REP4-045] provides details of construction traffic routes for the Proposed Development. The strategy for heavy goods vehicle (HGV) traffic includes the use of strategic elements of the highway network (A27 and A23) as far as possible before routing onto the local highway network (using only routes shown in Figures 7.6.5 and 7.6.6 in Appendix B of Outline Construction Traffic Management Plan [REP4-045]). Construction traffic routes that form part of the local highway network also use West Sussex County Council's prescribed Lorry Route Network wherever possible.</p> <p>It is also noted that the Applicant will employ a Delivery Management System (DMS) during construction of the Proposed Development to control the timing of deliveries to site and minimise the number of construction vehicles on the road, particularly during peak periods. This proposed DMS is detailed in Section 8.4 of the Outline Construction Traffic Management Plan [REP4-045] and is consequently secured by Requirement 24 of the Draft Development Consent Order [REP4-004].</p> <p>The Applicant has provided additional text within Section 4.11 of the Outline Construction Traffic Management Plan [REP4-045] updated at Deadline 5 on guidance that will be provided to construction workers and third-party suppliers making deliveries on routes which should not be used by construction traffic (both HGVs and LGVs) associated with the Proposed Development. This list of routes includes the two lanes that Clymping Parish Council have requested. The construction workforce will be made aware of these routes through Travel Information Packs that accompanies the detailed Construction Workforce Travel Plan that the Contractor will provide to the construction workforce outlined in the Outline Construction Workforce Travel Plan [REP3-031]. In addition, the Transport Coordination Officer will be responsible for informing third party suppliers of unsuitable routes when booking in deliveries for the Proposed Development as part of the DMS. This is secured through Requirement 24 of the Draft Development Consent Order [REP4-004].</p>
2.6.9	12. We will await the applicant's consideration of the use of Access 01 Ferry Road for post construction operational use. The current proposal Access 04 leads to Bread Lane, unrestricted Byway 197, which the applicant would be entitled use for occasional light vehicles in any case. Our expectation however is that the cable route will be further to the east. Bread Lane leads straight to the area to the west most prone to coastal flooding, overtopping or tidal seepage.	<p>At Issue Specific Hearing 2 (May 2024), the Applicant confirmed that in relation to Brookpit and Crookthorn Lanes, these lanes provide a route to access A-04, which is an operational route that would not be used during construction. As such, use would be limited to very infrequent use by light vans. During the construction phase, the Applicant noted that access A-01 provides suitable access, and that there would be no need to use these routes to access A-04. All contractors will be issued with details of the permitted route as part of the measures to be included in the stage specific Construction Traffic Management Plan.</p> <p>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</p>

Ref	Deadline 4 submission	Applicant's comments
2.6.10	<p>13. We feel the applicant should consider the impact of the inevitable holdups on A259 due to the proposed upgrades of the junctions between Littlehampton and Felpham. The re-siting of the Church Lane roundabout is a condition of the first phase of the strategic development to the west of Church Lane CM/1/17/OUT. This will proceed with the discharge of the remaining conditions of this original Outline application given the approval of the reserved matters CM/48/21/RES. The realignment is shown in the Construction Method Statement CM/6/24/DOC.</p>	<p>surveys to be undertaken post consent), operational access A-04 would no longer be practical and would not be used.</p> <p>To ensure safe access is achieved to / from the Church Lane compound the access junction will be designed in accordance with Design Manual for Roads and Bridges visibility splay requirements and subject to an independent Road Safety Audit. It is also the intention of the Applicant to reach agreement with West Sussex County Council on the design of the proposed access before the end of the DCO Examination period.</p> <p>The 300 house development project and associated reserved matters application referenced were included as part of the cumulative effects assessment within the Environmental Statement (ES) where relevant (Chapter 6: Coastal processes, Volume 2 [APP-047] to Chapter 29: Climate change, Volume 2 of the Environmental Statement [APP-070]), these developments are referred to as ID13 (CM/48/21/RES), and ID14 (CM/1/17/OUT).</p>
2.6.11	<p>14. The Applicant argues in several documents that there are no alternatives to the location of facilities such as the landfall in Clymping or the location of Climping Compound. We would like to remind the Inspectorate that there is an alternative whereby the cable is routed by sea to Fawley avoiding all the issues discussed at Special Issue Hearing 2 arising from landfall in Clymping, crossing the South Downs National Park and those in the area of Cowfold and Bolney.</p>	<p>Chapter 3: Alternatives, Volume 2 of the Environmental Statement (ES) [APP-044] describes the alternatives studied by the Applicant and a comparison of their environmental effects across the Proposed Development as a whole. This includes the alternatives considered and consulted on prior to the Development Consent Order (DCO) Application submission in August 2023. As described in Chapter 3: Alternatives, Volume 2 of the ES [APP-044], the Proposed Development has been developed through a multi-disciplinary design process including environment, engineering, landowner and cost considerations. The Applicant has identified the preferred onshore cable route based on evidence and justification and has sought to avoid, reduce or minimise the effects through the design process and also by identifying and securing embedded environmental measures. It is acknowledged that some residual effects remain.</p> <p>The Applicant refers to Deadline 1 Submission – 8.25.1 Applicant's Post Hearing Submission – Issue Specific Hearing 1 Appendix 1 – Further Information for Action Point 3 – Fawley and Dungeness [REP1-019] for further detail on why the Fawley option was discounted.</p>

Table 2-7 Applicant's comments to Cowfold Parish Council's Deadline 4 submissions

Ref	Deadline 4 submission	Applicant's comments
2.7.1	<p>Subsequent to the participation by members of Cowfold Parish Council in the Examining Authority's Open Forum (13th May 2024) and Open Hearing (15-16th May 2024) the Parish Council wishes to lay particular emphasis on a number of the points arising.</p> <p>Cowfold Parish Council iterates these key concerns below:</p>	Noted, the Applicant has provided a response to the comments raised below.
2.7.2	<p>1. Communication:</p> <p>a) Restating the ongoing lack of specific communication alongside the poor levels of clarity and granularity of documentary evidence produced to date by the applicant.</p>	The concern regarding communication provided has been responded to by the Applicant at Deadline 4, see Table 2-3 in Applicant's Comments on Deadline 3 Submissions [REP4-070] and has provided further clarity/granularity on documents throughout the Examination to alleviate concerns raised.
2.7.3	<p>2. Project Delivery:</p> <p>a) The Parish Council remains uneasy with the lack of control documents to be applied to third party contractors. Perceiving that this may lead to a 'free style' interpretation of the project parameters by any such contractors.</p>	<p>The project parameters and commitments for the Proposed Development are specified within a number of control documents, these control documents are secured through the Part 3: Requirements of the Draft Development Consent Order [REP4-004] and will be applied to the required contractors throughout the construction and operation phases.</p> <p>Table 3-1 of the Outline Code of Construction Practice [REP4-043] (updated at Deadline 5) identifies the supporting management plans which have been appended to it or submitted as standalone documents as part of the DCO Application. Table 3-1 also identifies those plans which will be prepared and form appendices to the stage specific Code of Construction Practice which will be provided for approval by the relevant authorities prior to that stage of the works. The stage specific documents will be developed in accordance with the outline documents submitted with the DCO Application. Where application documents have been updated during the Examination this will be defined in Schedule 16 of the Draft Development Consent Order [REP4-004].</p>
2.7.4	<p>3. Habitat and BioDiversity Net Gain Aspects:</p> <p>a) Once again the Parish Council feels the need to reiterate their dissatisfaction with the ongoing poor quality of the extant desktop and out of season habitat surveys. Seeing no evidence of additional 'boots on the ground' assessments taking place or acknowledgement given to environmental material provided by local residents.</p>	<p>The Applicant provided a response with regards the ecological surveys undertaken to inform the baseline at Deadline 3 in response to the Examining Authority's First Written Question TE 1.1 (Applicant's Responses to Examining Authority's First Written Questions (ExQ1) [REP3-051]). Furthermore, Horsham District Council noted in their response to the Examining Authority's First Written Question TE 1.2 (Responses to written questions (ExQ1) [REP3-069]) that they were satisfied with the outcomes of data collection in the area.</p> <p>The Applicant also notes that Appendix 22.2: Terrestrial ecology desk study, Volume 4 of the Environmental Statement [REP3-019] (updated at Deadline 5) references the material provided by a local resident (Janine Creaye).</p>
2.7.5	<p>b) There appear to be a significant number of assumptions being made by the applicant in relation to reinstatement of, for example, hedgerows. The Parish Council seeks confirmation that, if approved by Parliament, the Management of Hedgerows (England) Regulations 2024's baseline hedgerow management practices will be upheld on what remains essentially agricultural land. Further, the Parish Council seeks clarification of not only the process, e.g. species disturbance, but also the maturity of the proposed replanted vegetation at the time of installation. This to include the native species suitability and sustainability, taking into account resident and migrant wildlife, given the current levels of climate change. The latter being particularly apparent with</p>	<p>The Applicant has followed the mitigation hierarchy when designing the Proposed Development. The design in the first instance has sought to avoid permanent or temporary loss of the most sensitive habitats, minimise the permanent and temporary loss of sensitive habitats that could not be avoided, provide mitigation aimed at reducing the level of effect and provided a route to the provision of both compensation and Biodiversity Net Gain (BNG).</p> <p>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 of the Draft Development Consent Order [REP4-004] provides a list of hedgerows which</p>

Ref	Deadline 4 submission	Applicant's comments
	<p>the increased levels of water retention at the Oakendene sites. This is a significant landscape aspect/impact for the area given that Rampion 2 estimates there will be hedgerow loss of 647 meters. Greater clarity in respect of Vegetation Retention Plans is also sought.</p>	<p>may be removed by reference to the Tree Preservation Order and Hedgerow Plan [REP4-003]. 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 [REP4-003], none are to be lost to the Proposed Development however they may be pruned or lopped subject to Article 45.</p> <p>Further to this, the Applicant has provided an Outline Vegetation Retention and Removal Plan (Document reference: 8.87) as requested by the Examining Authority, which also highlights 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 includes tables showing the quantification of losses for each of the affected features shown. The Applicant has included a requirement in the Draft Development Consent Order [REP4-004] 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 [REP4-043] at Deadline 5.</p> <p>The Applicant has acknowledged the importance of hedgerows as connecting habitats within the assessment in Chapter 22: Terrestrial ecology and nature conservation, Volume 2 of the ES [REP4-022] (updated at Deadline 5), and commitment C-112 (Commitments Register [REP4-057] (updated at Deadline 5) has been included in the DCO Application to ensure impacts are reduced as much as possible. Further details are provided in the Outline Code of Construction Practice [REP4-043] (updated at Deadline 5) and Outline Landscape and Ecology Management Plan [REP4-047] (updated at Deadline 5).</p> <p>The Indicative Landscape Plans (Figures 1 of the Outline Landscape and Ecology Management Plan [REP4-047]) show the habitats that will be created at the onshore substation site at Oakendene. The intention is to have the area around the onshore substation at Oakendene in long term management to contribute towards biodiversity net gain (BNG) and provide other environmental benefits such as screening and water management. This intention is noted in Appendix 22.15: Biodiversity Net Gain Information, Volume 4 of the Environmental Statement [REP3-019]. However, land negotiations are ongoing and therefore, this cannot be confirmed by the Applicant at this juncture. The final design of tree planting and the contractual basis for long term management are still under discussion.</p>
2.7.6	<p>c) Clarification of the legal status of purchased reinstatement units. The Parish Council seeks a guarantee that the purchased reinstatement units will not be used outside the Parish. In essence confirmation from the applicant that this process has due legal status and can only relate to the aspect of the same location? In addition what recompense will the parish/landowners have if the purchaser(s) defaults or goes into receivership?</p>	<p>Appendix 22.15: Biodiversity Net Gain Information, Volume 4 of the Environmental Statement (ES) [REP3-019] was updated at Deadline 3 with a breakdown of BNG calculations by Local Planning Authority area. This provides Local Planning Authorities an understanding of the level of losses and gains to biodiversity delivered by the Proposed Development and the level of additional biodiversity units required to reach both a point of no net loss and biodiversity net gain. Requirement 14 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5) ensures that stage specific biodiversity net gain strategy is provided for approval by the relevant Local Planning Authority in consultation with the statutory nature conservation body. This provides each Local Planning Authority with a good degree of control over where biodiversity units will be provided, giving the secured driver for local delivery.</p> <p>Compensation is provided through habitat creation and reinstatement within the proposed DCO Order Limits and via the provision of biodiversity units to reach a position of 'no net loss' through the BNG process (see Appendix 22.15: Biodiversity Net Gain Information, Volume 4 of the ES [REP3-019] (updated at Deadline 4). Further to this, a commitment to delivering at least 10% BNG has been made by the Applicant and secured through Requirement 14 of the Draft Development Consent Order [REP4-004] (updated at Deadline 4).</p>

Ref	Deadline 4 submission	Applicant's comments
2.7.7	d) Greater granularity relating to the potential impact on ancient woodland, the established hedgerows which will be left in situ and scrub, e.g. loss of species food source vegetation. Also including the need for root protection and impacts on habitats affected by changing levels of light.	<p>Therefore, enhancement in addition to compensation to reach a position of 'no net loss' through the biodiversity net gain will be achieved.</p> <p>Appendix 22.15: Biodiversity Net Gain Information, Volume 4 of the ES [REP3-019] provides a mechanism to secure the delivery of BNG units by requiring proof of purchase of registered units. The process for registration of units ensures that satisfactory security is in place for the management and monitoring of the BNG units for a period of 30 years, either by way of Section 106 agreement or conservation covenant.</p> <p>The Applicant updated the Outline Landscape and Ecological Management Plan [REP4-047] at Deadline 4 to provide further clarity on monitoring and remedial actions for habitat creation and reinstatement measures.</p> <p>The Applicant can confirm that the design of the Proposed Development avoids all loss of ancient woodland and this is secured through commitment C-216 in the Commitments Register [REP4-057] (updated at Deadline 5) which is secured in the Outline Code of Construction Practice [REP4-043] (updated at Deadline 5) which is secured through Requirement 22 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5).</p> <p>It will be necessary to ensure that there are adequate measures in place to avoid indirect effects on fringing habitats, although these are already provided for example commitment C-105 (Commitments Register [REP4-057] updated at Deadline 5 requires temporary lighting to be designed to be wildlife friendly and commitment C-204 (Commitments Register [REP4-057] ensures root protection areas are in place (see the Outline Code of Construction Practice [REP4-043] and is secured via Requirement 22 within the Draft Development Consent Order [REP4-004] updated at Deadline 5.</p> <p>The Applicant has provided on Figure 7.1.1 of the Outline Code of Construction Practice [REP4-043] (updated at Deadline 5) what is proposed at each hedgerow and tree line. The timeframe for reinstatement is described in commitment C-103 (see Outline Code of Construction Practice [REP4-043] (updated at Deadline 5) and Commitments Register [REP4-057] (updated at Deadline 5)) along the cable route noting that reinstatement will take place within 2 years of loss. Further, the connectivity of these hedgerows would be temporarily filled prior to reinstatement and following construction with materials such as dead hedging, straw bales or willow hurdles to support connectivity (commitment C-291, Commitments Register [REP4-057] (updated at Deadline 5)). Efficacy in reinstatement has been addressed in terms of monitoring, management and adaptive management in Section 5 of the Outline Landscape and Ecology Management Plan [REP4-047] (updated at Deadline 5). Further, it is noted that several landowners in the area have planted hedgerows in the area as part of agri-environment schemes and others are to be delivered in the near future. This demonstrates that with appropriate aftercare hedgerows can be successfully established in the area.</p> <p>The Applicant has and will continue to follow the mitigation hierarchy to minimise biodiversity net loss. This has been achieved through:</p> <ul style="list-style-type: none"> • pursuing the route which avoids loss of ancient woodland; • use of trenchless techniques around ecologically sensitive areas; • scheduling of construction activity to minimise disturbance to sensitive species; • the presence of an Ecological Clerk of Works during construction;

Ref	Deadline 4 submission	Applicant's comments
2.7.8	<p>e) Provision of an enhanced protocol taking into account established, seasonal farming practices and county wide events:</p> <ul style="list-style-type: none"> • Consideration of farming activities, e.g. maintenance of hedge lines/rows along the A272 using the tractor and flag long arm attachment during the end of summer, after the bird nesting season, causing traffic delays for weeks during September/October. • Crop harvesting and crop rotation in local farm land causing mud discharge to A272 along with increased number of large agricultural vehicles resulting in protracted slow moving traffic. • Established motorcycle, bicycle and car events which travel through the area along the A272 bringing disruption to local businesses such as The Cafe, The Fold and Dennies' Café. Will these events be identified and addressed within the Rampion 2 project schedule(s) in respect of their supplementary impact on road traffic? 	<ul style="list-style-type: none"> • vegetation retention plans and reinstatement of habitats temporarily lost to the same condition; and • habitat creation at the onshore substation site to mitigate and compensate for permanent habitat loss and impacts on protected and priority species. <p>The assessment of effects of the Proposed Development on the transportation infrastructure, including the strategic and local road network, Public Rights of Way, Sustrans national cycle network, has been undertaken in Chapter 23: Transport, Volume 2 of the Environmental Statement (ES) [APP-064], Chapter 32: ES Addendum, Volume 2 of the ES [REP1-006] (updated at Deadline 5) and Appendix 23.2: Traffic Generation Technical Note, Volume 4 of the ES [REP3-021] (updated at Deadline 5). The peak week construction traffic impact along the A272 is shown within Table 2-14 of Chapter 32: ES Addendum, Volume 2 of the ES [REP1-006], with the following predicted increases in 24-hour traffic flow as a result of the Proposed Development:</p> <ul style="list-style-type: none"> • Receptor 25: A272 Station Road, Cowfold: An increase in total traffic flow of 0.9%. • Receptor 27: A272 West of A23: An increase in total traffic flow of 1.1%. • Receptor E: A272 Bolney Road, East of the A281: An increase in total traffic flow of 1.1%. <p>These predicted increases in traffic flow fall within the day-to-day traffic flow variability and will therefore will not materially worsen traffic congestion along the A272.</p> <p>Environmental measures will also be implemented to manage the potential effects from construction traffic. These are detailed in the Commitments Register [REP4-057] (updated at Deadline 5) and are secured in the Outline Construction Traffic Management Plan [REP4-045] (updated at Deadline 5), Outline Construction Workforce Travel Plan [REP3-031] (updated at Deadline 3), Outline Public Rights of Way Management Plan [REP3-033] (updated at Deadline 3) secured through Requirements 20 and 24 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5).</p>
2.7.9	<p>4. Water Neutrality:</p> <p>a) Using Natural England's definition of water neutrality, '<i>for every new development, total water use in the region after the development must be equal to or less than the total water-use in the region before the new development</i>' (Water Neutrality Study: Part A – Individual Local Authority Areas), the parish council acknowledges that any project construction phase(s), e.g. the Oakendene Substation, are presently exempt from this regulation. However, as part of the Sussex North Water Resource Zone (SNWRZ) the parish council has significant concerns about the applicant's proposed management and use of water on the Oakendene site. These may be summarised as:</p> <p>a.1) Water provision: the already overburdened SNWRZ is not in a position to support significant water extraction to facilitate construction at the Oakendene site.</p> <p>a.2) Water discharge: in an area where the land is already subject to marked levels of water retention additional discharge will only exacerbate the</p>	<p>The concern regarding water neutrality has been responded to by the Applicant at Deadline 4, see Table 2-3 in Applicant's Comments on Deadline 3 Submissions [REP4-070].</p> <p>Further to this, the Applicant has provided a summary of the oral position on tankering at vehicle movements to address water neutrality stated at Issue Specific Hearing 2, see Agenda Item 7: Traffic and Access in Applicant's Post Hearing Submission – Issue Specific Hearing 2 [REP4-072] and in response to Action Point 55 in Applicant's Responses to Action Points Arising from ISH2 and CAH1 [REP4-074].</p> <p>Following Issue Specific Hearing 2, an expert-to-expert meeting was held on 22 May 2024 with Natural England and Horsham District Council to discuss water neutrality and water provision.</p> <p>Horsham District Council outlined that construction water usage could be screened out as the types of indicative volumes (set out in the Applicant's Responses to Examining Authority's First Written Questions [REP3-051]) would fall well within Horsham District Council's headroom capacity for water use. This was because over 1000 homes were being built p/a prior to the neutrality position statement (in 2021) and that has since dropped significantly to around 300 homes per annum. This position removes the need for tankering in all construction water for Rampion 2 within the Sussex North Supply Zone.</p>

Ref	Deadline 4 submission	Applicant's comments
	<p>problem. Also taking into account the potential for contaminated water being discharged into the local watercourse(s) and aquifers.</p> <p>a.3) The applicant originally indicated the likelihood that the supply will be met by the provision of water bowsers, the parish council assumes both for delivery and removal? If this is to be the case the additional HGV traffic will further enhance the vehicle (road traffic volume) management issues identified at serial 6 below.</p> <p>The applicant subsequently informed the Examining Authority they had been advised that use of water during the construction phase was under the scope for Water Neutrality, see Serial 3 above, so would be able to use and discharge water from the mains supply without any additional consideration of the points raised at 4.a.1), 4.a.2) and 4. a.3).</p> <p>b) Therefore, Cowfold Parish Council wishes to obtain a clear, precise and current understanding of the applicant's proposed water management strategy both in respect of habitat/waterway preservation, the repercussions on road usage and the accompanying safety aspects and impacts.</p>	<p>In relation to operational and maintenance water usage Horsham District Council agreed that the indicative volumes represented very low usage in the context of other development and could likely be accommodated by an offsetting scheme if access to such a future scheme were available. The Applicant also noted that other options are available should a strategic offsetting scheme not be available. These are documented in Chapter 26: Water environment, Volume 2 of the Environmental Statement [APP-067] and the Design and Access Statement [REP3-013] and are secured by Requirement 8 [3] in the Draft Development Consent Order [REP4-004]. Natural England has also orally confirmed that it is happy with these positions, and that it will be reflecting this in its written submission at Deadline 5. In summary, a position of agreement has been made regarding water neutrality with both Natural England and Horsham District Council.</p> <p>As for the discharge of water from the Proposed Development, this is a separate matter to that of water neutrality. The approach from the Applicant in relation to site discharges remains unchanged from that stated within the application outline documents. In terms of discharge during the construction phase there are numerous embedded environmental measures for appropriate treatment and pollution prevention under Section 5.10 of the Outline Code of Construction Practice [REP4-043]. These measures will be implemented as part of the stage specific Construction Phase Drainage Plan as secured by Requirement 22 (c) of the Draft Development Consent Order [REP4-004]. Similarly, there are numerous measures for water attenuation and treatment set out in the Outline Operational Drainage Plan [REP4-041] which is secured by Requirement 17 of the Draft Development Consent Order [REP4-004]. These requirements will be followed accordingly to ensure that there will be no adverse impacts on local water quantity or quality.</p>
2.7.10	<p>5. Horizontal Direct Drilling (HDD) including Pollution Incident Response:</p> <p>a) A straightforward assessment, which can be shared with parish residents, in respect of the controls to be applied should any requirement arise that necessitate procedures 'in excess' of the documented process. Supplemented by an augmented Pollution Incident Response Plan specific to affected areas in Cowfold with appropriate reinstatement of any damaged land/vegetation.</p>	<p>As outlined in Section 4 of the Outline Code of Construction Practice [REP4-043] (updated at Deadline 5), the Contractor(s) will prepare a Pollution Prevention Plan (PPP) which will include a Pollution Incident Response Plan (PIRP) for the Proposed Development as part of the stage specific CoCP including when the relevant planning authorities, statutory nature conservation body and the Environment Agency would be notified in the event of an incident and engaged in the response. The PIRP will be in line with Guidance for Pollution Prevention 21 (PPG 21, 2009).</p> <p>The Applicant updated the Outline Code of Construction Practice [REP4-043] at Deadline 4 to make it clear that following rapid access control any spill and remove the drilling fluid (the approach to which will be detailed and agreed through the Pollution Incident Response Plan secured via Requirement 22 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5), Natural England would be contacted and the methods to achieve reinstatement and any necessary compensation would be agreed. The Applicant is of the opinion that rapid access to contain the spill is necessary to ensure that any impacts can be minimised.</p> <p>Further to this, Table 4-7 in the Outline Code of Construction Practice [REP4-043] (updated at Deadline 5) outlines relevant commitments to pollution incident management. A number of commitments (Commitments Register [REP4-057] (updated at Deadline 5)) have been included in DCO Application to ensure the risks and mitigations are managed effectively, including:</p> <ul style="list-style-type: none"> • C-123 micro-siting of HDD pits outside of the floodplain; • C-124 procedures to be developed as part of the ERP to be enacted where HDD locations are within a floodplain; • C-227 use of techniques to manage risk of drilling fluid breakout; • C-234 adoption of good drilling practices;

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- C-235 HDD works to be undertaken in accordance with Pipeline Design for Installation of Horizontal directional drilling (Manual of Practice) by ASCE Oct 2014 or similar;
- C-241 monitoring of fluid usage and enactment of measures if required; and
- C-245 environmentally hazardous drilling fluids or those containing groundwater hazardous substances will not be used.

2.7.11 6. Enhanced Traffic Volume and Associated Pollution Levels within an Existent Air Quality Management Area:

a) The incremental increase in traffic volume along the A272 towards the Cowfold Village junction of the A272/A281 has grown significantly since 2015 as demonstrated below.

Year(s)	% Increase	Traffic Numbers
2015 - 2019	+ 4.6%	18,220
2020 - 2021	Covid	
2022	As at 2015 -2019	
2023	+6.7%	19,750
2024 <small>First three months as compared with same period in 2023</small>	+3.5%	–

b) These increases in traffic volume places the road network at critical capacity. Any additional flow, particularly along the unlit areas of the A272, can only heighten the foreseeability of decreased road safety levels both for motorists and within the village, pedestrians.

Additionally the proposal for HGVs to first park up at the Oakendene vehicle compound, gaining access via the A62, and then be contacted by radio/mobile telephone to travel back to Kent Street, turning right across the flow of traffic, has the effect of doubling the HGV traffic in this already extremely congested area. Every turning vehicle effectively brings the A272 to a standstill at what is likely to be peak commuter traffic times. Hence the levels of risk are incrementally heightened when taking into consideration the junction(s) access/turning movements proximate to Kent Street which have not been included in any of the Rampion 2 Traffic Management or Modelling statistics provided to date.

It is also worth noting that of the three hospitals which serve Cowfold in the event of emergencies (Royal Sussex County Hospital Brighton, Princess Royal Hospital Haywards Heath and Saint Richard's Hospital Chichester) two are primarily accessed along the A272 Bolney Road whilst Saint Richard's is reached via the A272 Station Road. Access and egress by emergency fire and police services are also predicated on the free movement of traffic traversing the A272/A281 Cowfold Village junctions.

The assessment of likely significant effects generated by the construction phase of the Proposed Development has been completed within [Chapter 23: Transport, Volume 2](#) of the Environmental Statement (ES) [APP-064] and [Chapter 32: ES Addendum, Volume 2](#) of the ES [REP1-006], and based upon robust estimates of construction traffic contained within [Appendix 23.2: Traffic Generation Technical Note, Volume 4](#) of the ES [REP3-021] and controls contained within [Outline Construction Traffic Management Plan \[REP4-045\]](#).

The assessment methodology used by the Applicant and baseline traffic data has been agreed as acceptable by West Sussex County Council in their role as local highway authority for Cowfold. This was confirmed in their response to TA 1.2 of the Examining Authority's First Written Questions [REP3-073].

The Applicant has provided a summary of the oral position on traffic and access, and traffic modelling at Issue Specific Hearing 2, see Agenda Item 7: Traffic and Access in [Applicant's Post Hearing Submission - Issue Specific Hearing 2 \[REP4-072\]](#), further to this please see Appendix A of [Applicant's Responses to Action Points Arising from ISH2 and CAH1 \[REP4-074\]](#) which provides a joint response to Action Points 46 and 57. This note has demonstrated that the level of construction traffic using the needing to route between Oakendene compound and Kent Street with the traffic management strategy in place, will be lower than the overall peak week for construction traffic at this junction and section of the A272. The conclusions of [Chapter 32: ES Addendum, Volume 2](#) of the ES [REP1-006] will therefore not be impacted by introduction of the proposed traffic management strategy and remain valid.

Ref	Deadline 4 submission	Applicant's comments
2.7.12	<p>To summarise Cowfold Parish Council does not believe that the applicant, Rampion 2, has provided sufficient evidence to reassure parish residents of the suitability of the nominated sites for the purposes outlined. Or indeed that the mandatory background research and documentation has been conducted and communicated in such a way as to offer a proactive inducement to support the project. On the contrary the lack of intelligible communication(s), evidence of local, visible investigations and applicable documentation/studies has resulted in the Parish Council, in support of residents, making their position quite clear. The environs of historic Cowfold parish are wholly unsuitable to sustain the Rampion 2 substation proposal with its associated aspects and impacts throughout, in particular, the construction phase.</p>	<p>Noted, the Applicant has no further comments at this stage.</p>

Table 2-8 Applicant's comments to Shermanbury Parish Council's Deadline 4 submissions

Ref	Deadline 4 submission	Applicant's comments
2.8.1	Council reiterates its detailed objection in their submission of 19th March 2024	Noted, the Applicant provided a response to this submission by Shermanbury Parish Council at Deadline 3, see Table 3-1 in Applicant's Response to Deadline 2 Submissions [REP3-052] .
2.8.2	<p>Kent Street</p> <p>Shermanbury Parish Council considers it inappropriate and unnecessary for the vehicular traffic generated by Rampion 2 to use Kent Street. This opinion is strengthened by the understanding that the fields to the west of Kent Street will be used by Rampion for heavy goods traffic, with its own access to the A272 and with full access to the development track, making the use of Kent Street redundant.</p> <p>Kent Street is a very narrow, single track, country lane used by walkers, cyclists and equestrians and is therefore totally unsuitable for heavy construction vehicles. Any widening scheme would irrevocably destroy the rural character of this quintessentially English byway.</p>	<p>The Applicant can confirm that additional information has been provided within Section 8 of the Outline Construction Traffic Management Plan [REP4-045] updated at Deadline 4 on the general principles to be applied during the construction phase in relation to pedestrians, cyclists and equestrians. In addition, to provide specific controls for Kent Street, an update has been made to Traffic Management Strategies relating to construction accesses A-26, A-28, A-61 and A-64 included within Appendix D of the Outline Construction Traffic Management Plan [REP4-045] updated at Deadline 4.</p> <p>The concern regarding the use and suitability of Kent Street for construction vehicles has been responded to by the Applicant at Deadline 3, see Table 3-1 in Applicant's Response to Deadline 2 Submissions [REP3-052]. Further to this, the Applicant has provided a summary of its position in respect of Kent Street as stated at Issue Specific Hearing 2, see Agenda Item 7: Traffic and Access in Applicant's Post Hearing Submission – Issue Specific Hearing 2 [REP4-072] and in response to Action Points 38 to 46 in Applicant's Responses to Action Points Arising from ISH2 and CAH1 [REP4-074].</p> <p>It should be noted that the proposed haul road in the fields west of Kent Street does not connect with the A272. This was explored further at the Examining Authority's request in Applicant's Responses to Action Points Arising from ISH2 and CAH1 [REP4-074] at Action Point 45.</p>
2.8.3	We are completely opposed to the southern end of Kent Street and Wineham Lane being used by the construction traffic. The restriction of all Rampion heavy goods vehicles to their own roadway would prevent the lorries, which we now understand will include 10 axle construction vehicles up to 50 tonnes and 25.5 metres long, damaging the already existing fragile infrastructure.	<p>The concern regarding use of the southern end of Wineham Lane for construction traffic has been responded to by the Applicant at Deadline 4, see Table 2-18 in Applicant's Response to Stakeholder's Replies to Examining Authority's Written Questions [REP4-079]. This response is included below for clarity:</p> <p>Wineham Lane is a permitted construction traffic route for heavy goods vehicles (HGVs) only between the existing National Grid Bolney substation extension site and A272 as stated in the Outline Construction Traffic Management Plan [REP4-045] secured by Requirement 24 in the Draft Development Consent Order [REP4-004]. Construction traffic HGVs will not be permitted to use Wineham Lane south of the existing National Grid Bolney substation.</p> <p>The Applicant provided an update to the Outline Construction Traffic Management Plan [REP4-045] at Deadline 1 to including amendment to Figure 7.6.9c to reflect that Kent Street and Bob Lane off Wineham Lane will not be used as proposed routes for HGVs and Light Goods Vehicles (LGVs).</p>
2.8.4	<p>We would encourage investigation into the potential of taking full advantage of the Rampion cable corridor from the south by bridging the Cowfold stream and thus minimising any use of public roads in the area.</p> <p>The use of Kent Street for site access would result in nothing less than environmental vandalism!</p>	<p>The Applicant has previously responded to the potential approach of bridging the Cowfold Stream within Deadline 1 Submission – 8.25.3 Applicant's Post Hearing Submission – Issue Specific Hearing 1 Appendix 3 – Further information for Action Point 14 and 16 – Construction Accesses [REP1-022]. Paragraph 1.4.2 (2nd bullet point) states that “<i>Operating a haul road across this watercourse (Cowfold Stream) would be technically complex and highly detrimental to the local environment</i>” and concludes in Paragraph 1.4.5 that “<i>there are several barriers that make the operation of a continuous haul road across this segment unfeasible and environmentally undesirable, environment, most particularly ecology and transport</i>”.</p> <p>It is possible to cross the Cowfold Stream using a bridge, however this would result in the loss of areas of mature dense scrub that run either side of the watercourse and would likely result in additional effects on a range of ecological species including nightingale (<i>Luscinia megarhychos</i>) and otter (<i>Lutra lutra</i>). One of the</p>

Ref	Deadline 4 submission	Applicant's comments
2.8.5	<p>B2116 Partridge Green Shermanbury Parish Council is alarmed by the apparent assumption that the B2116 is a rural backwater with little traffic. The road is extremely busy, travelled by the only regular bus route, and is the main access to a range of local shops, medical facilities, pubs, and a school. The road also is widely used by commuters attempting to circumvent traffic delays on the A272.</p> <p>The intention to close or to trench the B2116 with single lane restrictions would cause severe disruption and hardship to the whole of the local community. Shermanbury residents rely on this road to access the facilities in Partridge Green. Disruption of traffic is likely to adversely affect trade in Partridge Green High Street and the two industrial estates in the locality, which may threaten their viability and livelihood.</p> <p>We would strongly urge the Inspector to insist that the Partridge Green Road is drilled beneath to maintain an uninterrupted traffic flow.</p>	<p>reasons to undertake a trenchless crossing at this location was to minimise adverse effects on ecological features.</p> <p>Any continuous haul road crossing of the Cowfold Stream (which is identified as an Environment Agency Main River) would require a temporary haul road crossing and necessitate further temporary construction works within the fluvial floodplain at that location. The Limits of Deviation for this trenchless crossing compound (Sheet 25 in Appendix A: Crossing Schedule of the Outline Code of Construction Practice [REP4-043] with Reference: STRX-1de-18 "Cowfold Stream") have been carefully sited outside of Flood Zone 2 and 3, in accordance with a sequential approach taken to avoid flood risk areas. This represents the best option from a water environment perspective both in terms of minimising any avoiding potential changes to flood risk, and surface water quality (from temporary ground disturbance and sedimentation).</p> <p>Further to this, the Applicant was requested by the Examining Authority to provide a statement comparing the potential effects of using Kent Street to access A-64 and A-61 with using haul roads (using temporary bridging where necessary) from access A-63 to access the sections of the proposed onshore cable corridor accessed from A-64 and A-61 at Issue Specific Hearing 2, the Applicant has provided to this request in Applicant's Responses to Action Points Arising from ISH2 and CAH1 [REP4-074], see PINS ref 45 in Table 2-1.</p> <p>The Applicant concludes in its response to Action Point PINS ref 45 that although the use of haul roads described would remove the use of Kent Street by construction traffic, apart from works associated with the trenchless crossing (TC-28) described. This would likely reduce or avoid the significant effect related to traffic and transport on Kent Street. However, there are significant constraints to use of access 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.</p> <p>The concern regarding use of open cut trenching techniques across the B2116 has been responded to by the Applicant at Deadline 3, see Table 3-1 in Applicant's Response to Deadline 2 Submissions [REP3-052]. This response is included below for clarity:</p> <p><i>"As set out in Table 7-1 in the Outline Construction Traffic Management Plan [REP1-010], there are two highway crossing locations that have been identified within the proposed DCO Order Limits that are required to be crossed by open cut trench method. Of these two highway crossing locations, one is located on a single carriageway road, with one lane per direction. This is crossing 17 (RDX-1dw-17), on the B2116.</i></p> <p><i>At this highway crossing location, temporary construction traffic management will be deployed. This will involve either the use of temporary traffic signals or manned stop/go boards to allow the road to remain open or temporary full road closure. The preferred temporary traffic management strategy for the B2116 will be confirmed during detailed design as part of a stage specific Construction Traffic Management Plan. Stage specific construction traffic management plans will be produced in adherence of controls contained within the Outline Construction Traffic Management Plan [REP1-010] secured through Requirement 24 of the Draft Development Consent Order [REP2-002].</i></p> <p><i>All temporary construction traffic management implementation plans will need to be approved by West Sussex County Council and will be applied in accordance with guidance and procedures as defined within Section 14 of the Road Traffic Regulation Act 1984."</i></p>

Ref	Deadline 4 submission	Applicant's comments
2.8.6	<p>Conclusion In conclusion we feel that the proposer's road management plan has not been fully and appropriately investigated and developed. It is disappointing that the consultation process did not address these serious local issues at an earlier stage</p>	<p>Further to this response in Table 3-1 in Applicant's Response to Deadline 2 Submissions [REP3-052], the Applicant updated to the Outline Construction Traffic Management Plan [REP4-045] at Deadline 3, to remove heavy goods vehicle (HGV) routing along the B2116 west of A-53 (see Table 5-2 and Figure 7.6.6c). HGV construction traffic will therefore not be permitted to route through Partridge Green and reduce potential transport impacts within Partridge Green.</p> <p>Noted, the Applicant has provided response to Shermanbury Parish Council's concerns above.</p>

Table 2-9 Applicant's comments to Twineham Parish Council's Deadline 4 submissions

Ref	Deadline 4 submission	Applicant's comments
2.9.1	Twineham Parish Council endorses the comments made by Bolney Parish Council and wishes that there should be no use by construction traffic of Hickstead Lane, Bolney Chapel Road and Bob Lane.	Noted, the Applicant has provided a response to Bolney Parish Council's Deadline 4 submission [REP4-102] in Table 2-5 above.
2.9.2	Twineham Parish Council is concerned regarding the use of the southern end of Wineham Lane for construction traffic.	<p>The concern regarding use of the southern end of Wineham Lane for construction traffic has been responded to by the Applicant at Deadline 4, see Table 2-18 in Applicant's Response to Stakeholder's Replies to Examining Authority's Written Questions [REP4-079]. This response is included below for clarity:</p> <p><i>“Wineham Lane is a permitted construction traffic route for heavy goods vehicles (HGVs) only between the existing National Grid Bolney substation extension site and A272 as stated in the Outline Construction Traffic Management Plan [REP3-029] secured by Requirement 24 in the Draft Development Consent Order [REP3-003]. Construction traffic HGVs will not be permitted to use Wineham Lane south of the existing National Grid Bolney substation.”</i></p>

Table 2-10 Applicant's comments to West Grinstead Parish Council's Deadline 4 submissions

Ref	Deadline 4 submission	Applicant's comments
2.10.1	<p>West Grinstead Parish Council strongly objects to the proposal to put in the Rampion 2 pipeline across the B2116 between Shermanbury and Partridge Green using an open cut crossing. We believe it should be by way of a trenchless crossing, in line with the planned crossing of the B2135. This would save considerable inconvenience to the many people who use the B2116. Under no circumstances should the road be temporarily closed as suggested in Schedule 3 to the draft DCO.</p> <p>Partridge Green lies in the parish of West Grinstead. It has a population of about 2,200. In the Horsham Local Plan, both the existing one and the emerging new one, it is classified as a medium size village. It is sandwiched between the B2135 to the west, the A281 to the east and is south of the A272. The B2116 runs west east through the southern end of the village.</p> <p>There is no rail service. The only public transport is the 17 bus service between Horsham and Brighton. This comes down the A281 through Cowfold and turns right in Shermanbury to do a circuit of the village before rejoining the A281 in Shermanbury and heading south through Henfield.</p> <p>Partridge Green has a primary school with about 150 children, a fire station, a few shops and two thriving commercial estates. Few residents work in the village. Many work elsewhere. Most are dependent on their cars. Some travel into the village to work in the two commercial estates. Others, many from the coast, use the B2116 as a cut through to avoid congestion at Cowfold, one of only two air quality management areas in West Sussex.</p> <p>As matters stand, the intention is to use a trenchless crossing of the B2135 south of Ashurst. Whoever decided to do that and not do the same with the B2116 cannot have known the roads in question. It must have been part of a desk-top exercise. The decision is so illogical as to be almost perverse. Hopefully, it is still not too late to be reversed.</p>	<p>The concern regarding use of open cut trenching techniques across the B2116 has been responded to by the Applicant at Deadline 3, see Table 3-1 in Applicant's Response to Deadline 2 Submissions [REP3-052]. This response is included below for clarity:</p> <p><i>“As set out in Table 7-1 in the Outline Construction Traffic Management Plan [REP1-010], there are two highway crossing locations that have been identified within the proposed DCO Order Limits that are required to be crossed by open cut trench method. Of these two highway crossing locations, one is located on a single carriageway road, with one lane per direction. This is crossing 17 (RDX-1dw-17), on the B2116.</i></p> <p><i>At this highway crossing location, temporary construction traffic management will be deployed. This will involve either the use of temporary traffic signals or manned stop/go boards to allow the road to remain open or temporary full road closure. The preferred temporary traffic management strategy for the B2116 will be confirmed during detailed design as part of a stage specific Construction Traffic Management Plan. Stage specific construction traffic management plans will be produced in adherence of controls contained within the Outline Construction Traffic Management Plan [REP1-010] secured through Requirement 24 of the Draft Development Consent Order [REP2-002].</i></p> <p><i>All temporary construction traffic management implementation plans will need to be approved by West Sussex County Council and will be applied in accordance with guidance and procedures as defined within Section 14 of the Road Traffic Regulation Act 1984.”</i></p> <p>Further to this response in Table 3-1 in Applicant's Response to Deadline 2 Submissions [REP3-052], the Applicant updated to the Outline Construction Traffic Management Plan [REP4-045] at Deadline 3, to remove heavy goods vehicle (HGV) routing along the B2116 west of A-53 (see Table 5-2 and Figure 7.6.6c). HGV construction traffic will therefore not be permitted to route through Partridge Green and reduce potential transport impacts within Partridge Green.</p>

2.3 Prescribed Consultees

Table 2-11 Applicant's comments to Historic England's Deadline 4 submissions

Ref	Deadline 4 submission	Applicant's comments
2.11.1	We offer these comments on the documents submitted by the Applicant at Deadline 3 (25th April 2024) and in reference to matters addressed at the Issue Specific Hearing held on 16th May, which we observed online as relevant to our role and responsibilities. Please use this letter as our submission made earlier today incorrectly referenced the wrong examination deadline.	The Applicant has no further comments on this matter at this time.
2.11.2	<p>1. Applicant's second update to the draft DCO – PINs Ref: REP3-004 In reference to Rampion 2 Wind Farm; Category 3: Draft Development Consent Order; Date: April 2024; Revision D; Applicant's Document Reference: 3.1</p> <p>1.1 Schedule 1, Part 3 (Requirements), 19(1) we request that text is included to clarify that any site-specific Written Scheme of archaeological Investigation (WSI) is to be produced in consultation with West Sussex County Council (WSSCC) with respect to County Council landscape and environment services, and prior to submission for approval by the relevant planning authority. This request is consistent with requirements for consultation with West Sussex County Council (e.g. Requirement 32(1)), as explained in paragraph 9.13.36 in Rampion 2 Wind Farm Category 3: Development Consent Order Explanatory Memorandum (tracked changes); Date: April 2024; Revision C; Applicants Document Ref: 3.2; PINs Ref: REP3-006. We also take this opportunity to refer you to Requirement 18 in Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024 (as granted by Secretary of State, dated 17/04/2024); this specific requirement ensures consultation occurs with a countywide service, such that the text includes "...after consultation with Norfolk County Council and the statutory historic body."</p>	Reference to West Sussex County Council (WSSCC), as consultee in respect of discharge of Requirement 19, will be reinserted in the Draft Development Consent Order [REP4-004] as updated at Deadline 6. Reference to WSSCC had been omitted at the request of WSSCC, as made in its Local Impact Report [REP1-054] .
2.11.3	1.2 We are concerned that the devolving of post consent heritage matters to different authorities could add unnecessary complexity, particularly given that this is a linear scheme where nationally significant heritage assets would transcend across different areas of responsibility. Specifically, we are also concerned whether all the local authorities in question would have appropriate specialist heritage advisors and capacity available to oversee this process. This would need to include the approval and monitoring of site specific WSI's, and the extensive fieldwork and post excavation monitoring that this proposal would generate. Given that WSSCC have overseen the production of the overarching WSI's and have provided detailed advice on the scheme to date, we also think they would be appropriately placed to continue.	Requirement 19 has been retained as to be discharged by the relevant planning authority but as noted above this will be amended in the Draft Development Consent Order [REP4-004] as updated at Deadline 6, to require consultation with West Sussex County Council (WSSCC). As also noted above, reference to WSSCC had been omitted at the request of WSSCC, as made in its Local Impact Report [REP1-054] .
2.11.4	1.3 Schedule 1, Part 3, 19(5) we request amendment of the first sentence to: "Should archaeological remains be left in situ on any site, a site-specific archaeological management plan must be submitted to and approved in writing by the relevant planning authority following consultation with West Sussex County Council."	The wording of Requirement 19 will be amended both to include WSSCC and to respond to additional comments made by the Examining Authority in its schedule of proposed changes to the DCO [PD-013] .
2.11.5	1.4 Schedule 11 (Deemed Marine Licence – Generation Assets), Part 2 (Conditions), 11(2)(c) the Applicant has retained 6 months as the submission timeframe to the MMO on the basis that 6 months is stated for other project documentation e.g. the project	Noted, the Applicant has no further comments at this staged.

Ref	Deadline 4 submission	Applicant's comments
	<p>environmental management plan (see paragraph 10.2.11 Rampion 2 Wind Farm Category 3: Development Consent Order Explanatory Memorandum (as referenced above).</p> <p>We have no further comment to offer and accept the retained timeframe</p>	
2.11.6	<p>1.5 We accept the statement made in paragraph 10.2.10 in Rampion 2 Wind Farm Category 3: Development Consent Order Explanatory Memorandum, as referenced above) that the project specific WSI (produced in accordance with any outline marine WSI) for approval by the MMO is to follow "...consultation with the statutory historic body" (as stated in draft Deemed marine Licence – Generation Assets, Condition 11(2)).</p>	Noted, the Applicant has no further comments at this stage.
2.11.7	<p>1.6 Schedule 12 (Deemed marine Licence – Transmission Assets) it is our advice that the final sentence of condition 11(2) is amended as follows: "...following consultation with West Sussex County Council and the statutory historic body." We stand by this advice as stated in our letter to you, dated 25th April 2024 [PINs Ref: REP3-075] and in recognition of the attention given to the risk of encountering presently unknown archaeological materials as explained by West Sussex County Council and South Downs National Park at the Issue Specific Hearing on 16th May</p>	Reference to West Sussex County Council (WSSCC), including with respect to the approval and monitoring of site specific WSIs, had been omitted at the request of WSSCC, as made in its Local Impact Report [REP1-054]. However, following receipt of the Examining Authority's schedule of proposed changes to the DCO [PD-013], the Applicant has amended condition 11(2) of Schedule 12 to provide for consultation with West Sussex County Council in respect of the intertidal area landward of mean low water springs, and with the statutory historic body.
2.11.8	<p>1.7 Schedule 12 (Deemed Marine Licence – Transmission Assets), Part 2 (Conditions), 11(2)(c) the Applicant has retained 6 months as the submission timeframe to the MMO on the basis that 6 months is stated for other project documentation (as acknowledged above).</p> <p>We have no further comment to offer and accept the retained timeframe.</p>	Noted, the Applicant has no further comments at this stage.
2.11.9	<p>2 Comments on any further information/submissions received by Deadline 3: Marine Historic Environment</p> <p>2.1 Issue Specific Hearing (held 16th May), Item 10 – we noted the inclusion of an item regarding any agreement of an updated Outline Marine Written Scheme of Investigation [APP-235]. We are aware that the Applicant has submitted the following document: Rampion 2 Wind Farm, Category 7: Other Documents, Outline Marine Written Scheme of Investigation (tracked changes); Date: April 2024; Revision B [PINs Ref: REP3-042]. We offer the following comments.</p>	Noted, please see the Applicant's response below.
2.11.10	<p>2.2 We are pleased to see acknowledgment that WSSCC is the archaeological curator landward of Landward of Mean Low Water Springs and therefore the appropriate party with whom consultation should be conducted to produce any site-specific WSI (see paragraph 2.4.1).</p>	The Applicant welcomes this response by Historic England.
2.11.11	<p>2.3 Section 5.7 (Historic Seascape Characterisation) has not been removed as per our advice in our Written Representation [PINs Ref: REP1-055]. We have therefore reviewed the document submitted by the Applicant entitled Rampion 2 Wind Farm; Category 8: Examination Documents; Applicant's Response to Historic England Deadline 1 Submission on Marine Archaeology; Date: April 2024; Revision A; Document Reference: 8.63 [PINs Ref: REP3-057]. It is apparent that the Applicant continues to interpret Historic Seascape Characterisation as a "...known and potential archaeological receptors that could be impacted", which is not in accordance with our advice. Historic Seascape Characterisation is exclusively a means to set the context within which heritage assets are located. Heritage assets are therefore the sensitive receptor. However, given that this is an outline document</p>	<p>The Applicant refers the Examining Authority to its response 11.6 (page 22) in Applicant's Response to Historic England Deadline 1 Submission on Marine Archaeology [REP3-057].</p> <p>An updated Outline Marine Written Scheme of Investigation [REP3-041] has been submitted at Deadline 5 to address concerns raised by Historic England in 'Comments on any further information/ submissions received by Deadline 3' [REP4-087] (submitted at Deadline 4). The updates include the removal of section 5.7 (Historic Seascape Characterisation)</p>

Ref	Deadline 4 submission	Applicant's comments
	and not included in Schedule 16 (Documents to be certified), we see it as representing draft documentation for revision and amendment should consent be obtained.	
2.11.12	2.4 Section 6 (Embedded environmental measures) we accept the edits introduced on Table 6-1. 2.5 Section 6.2 (Embedded environmental measures for wrecks and obstructions), we accept the edit introduced in paragraph 6.2.2.	The Applicant welcomes this response by Historic England.
2.11.13	2.6 Section 6.5 (Embedded environmental measures for deposits of geoarchaeological potential) it is apparent that our comments submitted previously (as referenced above) have not resulted in any amendment to the outline WSI. The Applicant in the document Response to Historic England Deadline 1 Submission on Marine Archaeology (as referenced above) tries to address this matter in reference to published guidance and through future use of survey specific Method Statements (as described in line Ref: 11.16). It is therefore important, should consent be obtained, that a suitable WSI is to be produced in consultation with Historic England, in accordance with any Deemed Marine Licence, and thereby allow for subsequent survey method statements to be produced in consultation with Historic England.	This is noted by the Applicant. In accordance with deemed Marine Licence (dML) Condition 11(2), Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] <i>"The authorised scheme must not commence unless no later than six months prior to the commencement a written scheme of investigation has been submitted to and approved by the MMO, in accordance with the outline marine written scheme of investigation, and in accordance with industry good practice, following consultation with the statutory historic body..."</i> Further, an updated Outline Marine Written Scheme of Investigation [REP3-041] has been submitted at Deadline 5 to address concerns raised by Historic England in 'Comments on any further information/ submissions received by Deadline 3' [REP4-087] (submitted at Deadline 4). Section 6.5 has been updated to include possible sample methods (vibrocore and boreholes) as well as a methodical approach to the archaeological assessment of geotechnical cores. Further details have also been added to section 8.4.
2.11.14	2.7 Table 6-4 (Further site-specific documents, works and surveys) states that a Draft Marine WSI is to be produced "Based on this Outline Marine WSI, to be agreed with the Regulator (MMO) to ensure archaeological objectives are considered and impacts on marine heritage receptors are avoided and mitigated." It is therefore essential that the Applicant is obliged, should consent be obtained, to consult the "statutory historic" bodies i.e. Historic England (Generation and Transmission Assets) and West Sussex County Council (Transmission Assets) in order to produce a marine WSI, as provided through Schedule 11 and 12 draft Deemed Marine Licences.	An updated Outline Marine Written Scheme of Investigation [REP3-041] has been submitted at Deadline 5 to address concerns raised by Historic England in 'Comments on any further information/ submissions received by Deadline 3' [REP4-087] (submitted at Deadline 4). The updates include; <ul style="list-style-type: none"> - Removal of section 5.7 - The text "and in consultation with Historic England (Generation and Transmission Assets) and West Sussex County Council (intertidal areas only) (Transmission Assets)" has been added to Table 6-4. Section 6.5 has been updated to include possible sample methods (vibrocore and boreholes) as well as a methodical approach to the archaeological assessment of geotechnical cores. Further details have also been added to section 8.4.
2.11.15	2.8 Section 8 (Schemes of investigation), no amendments have been introduced to address the comments submitted previously in our Written Representation (as referenced above). We have no further comment to offer.	As stated in row 11.24 of Deadline 3 Submission - 8.63 Applicant's Response to Historic England Deadline 1 Submission on Marine Archaeology [REP3-057] , Section 8.8 is worded as per Archaeological Written Schemes of Investigation for Offshore Wind Farm Projects (The Crown Estate, 2021) section 12.7.
2.11.16	2.9 Section 9 (Arrangements for review of the WSI), no amendments have been introduced to address the comments submitted previously in our Written Representation (as referenced above). We have no further comment to offer.	As stated in row 11.24 of Deadline 3 Submission - 8.63 Applicant's Response to Historic England Deadline 1 Submission on Marine Archaeology [REP3-057] , Section 9 is in accordance with the approach set out in the Archaeological Written Schemes of Investigation for Offshore Wind Farm Projects (The Crown Estate, 2021)
2.11.17	2.10 In conclusion, we are not satisfied by the amended marine outline WSI (as referenced above) or in the response made by the Applicant in Examination Documents; Applicant's Response to Historic England Deadline 1 Submission on Marine Archaeology (as referenced	An updated Outline Marine Written Scheme of Investigation [REP3-041] has been submitted at Deadline 5 to address concerns raised by Historic England. The Applicant does not intend to remove the document from Schedule 16, Part 2.

Ref	Deadline 4 submission	Applicant's comments
	above). We therefore agree with the removal of outline marine Written Scheme of Investigation [PINs Ref: APP-235] from Schedule 16, Part 2 (Other documents to be certified).	
2.11.18	3 Comments on any further information/submissions received by Deadline 3: Onshore Historic Environment	Noted, please see the Applicant's response below.
	3.1 We are aware that the Applicant has submitted the following document: Rampion 2 Wind Farm, Category 7: Other Documents, Outline Onshore Written Scheme of Investigation (tracked changes); Date: April 2024; Revision B [PINs Ref: REP3-036]. We provide comment below:	
2.11.19	3.2 C-80: we recommend amending 'appropriate' to 'proportionate'.	Noted, the change to include approval by the relevant planning authority has been incorporated into a revised Outline Onshore Written Scheme of Investigation [REP3-035] submitted at Deadline 5.
2.11.20	3.3 C-79: Mitigation of significant adverse effects during construction should be through avoidance first before mitigation. Only once harm has been avoided and minimised should mitigation then apply. This is detailed in the following paragraphs, but needs to be made clear here.	Noted, please see the Applicant's response below.
2.11.21	3.4 C-225: A wider range of engineering solutions should be considered in order to avoid and minimise harm. All possible techniques should be identified and detailed in the Outline Onshore WSI and followed through in the site specific onshore WSI's. It would be better to present this as an agreed suite of techniques that could be considered and drawn from as required.	<p>The Applicant has updated commitment C-225 (Commitments Register [REP4-057]) at Deadline 5 in consultation with West Sussex County Council and includes a wider range of engineering solutions which could be employed as appropriate as set out in the Outline Onshore Written Scheme of Investigation [REP3-035]. The relevant stage specific plan shall include detail on how commitment C-225 is delivered and where it is applicable to that stage of works.</p> <p>Commitment C-225: <i>"In the event of the discovery of previously unknown high significance archaeological remains within the onshore Order limits, their significance and suitability for preservation in situ must be assessed by field evaluation, in accordance with the outline onshore written scheme of investigation. Any archaeological remains which are demonstrably of national significance will be preserved in situ, unless, following an application made to it by the undertaker, it is agreed by the relevant planning authority following consultation with WSCC, that either they are not suitable for preservation in situ or that preservation in situ cannot be achieved through acceptable engineering or design solutions having regard to technical and environmental constraints. Should archaeological remains be left in situ on any site, a site-specific archaeological management plan must be submitted to and approved in writing by the relevant planning authority following consultation with WSCC. Any further works, including removal and reinstatement, must be carried out in accordance with the approved site-specific archaeological management plan, unless otherwise approved by the relevant planning authority."</i></p>
2.11.22	3.5 Section 1.3.8: Please see our advice for paragraph 1.1 above. We are concerned that the applicant is proposing separation of curatorial advice between different local authorities. We recommend that WSCC retains overarching curatorial responsibilities for this project if approved, and that the Outline Onshore WSI is updated accordingly.	Reference to West Sussex County Council (WSCC), including with respect to the approval and monitoring of site specific Written Schemes of Investigation (WSIs), had been omitted at the request of WSCC, as made in its Local Impact Report [REP1-054] . As noted above this has been amended in the Draft Development Consent Order [REP4-004] as it has been updated at Deadline 5.

Ref	Deadline 4 submission	Applicant's comments
2.11.23	3.6 Section 1.3.8: Regional Advisor is not a role at Historic England and should be replaced with Historic England Regional Inspector of Ancient Monuments (and followed through where relevant elsewhere in the document).	Noted, the change to include approval by the relevant planning authority has been incorporated into a revised Outline Onshore Written Scheme of Investigation [REP3-035] submitted at Deadline 5.
2.11.24	3.7 Sections 4.5.2-4.5.5: The only geophysical technique referred to here is magnetometry. We recommend that a suite of available techniques should be identified to respond according to different geological and site-specific factors. There may be geophysical survey techniques that aid the evaluation process and better refine where intrusive fieldwork may be targeted. This would be particularly relevant for areas of high potential in relation to designated assets, and in areas where complex geological/geoarchaeological deposits may be situated.	Noted, this change has been incorporated into a revised Outline Onshore Written Scheme of Investigation [REP3-035] submitted at Deadline 5.
2.11.25	3.8 In conclusion, we are broadly satisfied by the amended Onshore Outline WSI (as referenced), subject to the Examination Authorities consideration of the suggested amendments detailed above.	Noted, the Applicant has no further comments at this stage.
2.11.26	<p>4 Comments on any further information/submissions received by Deadline 3: Applicants' use of case studies at the Issue Specific Hearing on 16th May.</p> <p>4.1 We urge the Examination Authority to carefully consider whether case studies presented to justify the applicants' approach to the historic environment are relevant and appropriate. For example, we do not think the SLP (Southampton to London Pipeline project, PINs Ref: EN070005) a comparable example. The SLP demonstrably avoided harm to onshore nationally important designated heritage assets by careful selection of route, ensuring that there were no planned encroachments into known areas of high potential for nationally important archaeological remains.</p>	<p>This statement does not appear to be consistent with the Environmental Statement submitted by the applicant for the Southampton to London Pipeline project. For example, Volume 6 Environmental Statement (Volume B) Chapter 9: Historic Environment Application Document: 6.2 paragraph 9.3.16 states that there was:</p> <ul style="list-style-type: none"> • <i>"a very high potential for Neolithic and Bronze Age archaeological remains within the vicinity of Laleham;</i> • <i>a very high potential for Roman archaeological remains within the vicinity of Alton;</i> • <i>a high potential for Mesolithic archaeological remains within the sand and gravel terraces and alluvial deposits associated with all river valleys within the study area;</i> • <i>a high potential for Head deposits within valleys to contain Mesolithic and Neolithic archaeological remains;</i> • <i>a high potential for late Prehistoric archaeological remains within the chalk downland and Surrey heathland;</i> • <i>a high potential for late Prehistoric archaeological remains within the vicinity of Chertsey Meads;</i> • <i>a high potential for Roman archaeological remains across the chalk downlands"</i> <p>It is apparent from the information included within the Environmental Statement that this identified potential extended to remains which could be of high heritage significance, including potential for Neolithic settlement.</p>
2.11.27	4.2 Conversely, the Rampion 2 chosen onshore route was identified as being the most harmful for heritage, in particular in relation to designated assets and their associated remains. The approach taken for the SLP of archaeological evaluation largely post consent, is also not therefore a directly comparable approach.	<p>The route chosen for the onshore cable for Rampion 2 has avoided all designated heritage assets.</p> <p>It is assumed on the basis of previous consultee comments that the reference to the route "as being the most harmful for heritage" refers to the section from Km 12 and 17. Within this area the completed geophysical survey identified no 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, or of any associated Neolithic settlement.</p>

Table 2-12 Applicant's comments to Marine Management Organisation's Deadline 4 submissions

Ref	Deadline 4 submission	Applicant's response
Planning Act 2008, E.On Climate and Renewables UK Ltd, Proposed Rampion 2 Offshore Wind Farm Order		
1.2 Written Representation from Reuben Taylor KC on behalf of the MMO		
2.12.1	The MMO objects to the provisions relating to the process of transferring and/or granting the deemed marine licences set out in the draft DCO at Article 5.	<p>The Applicant has set out its position in respect of the amendment to the Draft Development Consent Order requested by the Marine Management Organisation (MMO) in its previous submissions including in the Applicant's response to action points arising from Issue Specific Hearing 1 and Compulsory Acquisition Hearing 2 [REP4-074]</p> <p>In summary the Development Consent Order (DCO), if granted, will give the undertaker powers which relate to each of the construction, operation and maintenance phases of the authorised project. The undertaker will require the ability to transfer the benefit of those powers under the Order, including in respect of the offshore works which are also authorised by the deemed marine licences. The most obvious example will be the requirement to transfer the benefit of the consents for the transmission assets to an OFTO. Transfer of benefit articles are common to all made DCOs for offshore wind farms. This principle is not challenged by the MMO in relation to the transfer of the benefit of the DCO itself.</p> <p>In addition to transferring the benefit of the DCO, it is imperative that the undertaker has certainty over the ability to transfer or grant the benefit of either of the deemed marine licences to a third party contemporaneously with the transfer of the DCO in order that the same entity has the benefit of and liability under both the DCO and the associated deemed marine licence at all material times. If separate entities had the benefit/liability of the DCO and the marine licence it would risk delaying delivery of the project (since both consents are required), create uncertainty in the enforcement regime, and frustrate the "one stop shop" approach to the ability to deem marine licences to be granted alongside the DCO itself.</p> <p>As such it is necessary for the DCO to provide a single process dealing with the simultaneous transfer of all powers for the offshore works. Whilst the MMO has indicated that it has never refused an application to transfer a marine licence, it is not prevented from doing so, and further there are no statutory timescales within which a decision must be made on an application. The undertaker could be left waiting for some time for confirmation that its application has indeed been processed with uncertainty as to whether the transferee or lessee does have authority to carry out licensed marine activities.</p> <p>The approach to transfer or grant of a deemed marine licence in the Rampion 2 Draft Development Consent Order [REP4-004] (updated at Deadline 5) replicates that used in numerous offshore wind projects and the reflects drafting that has evolved over time to address the requirements of undertakers seeking to construct operate and maintain consented projects.</p>

Ref	Deadline 4 submission	Applicant's response
		<p>It is acknowledged that the MMO will reasonably require a record of the person who has the benefit of a marine licence at all times. In this context it must be noted that Article 5 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5) requires that the consent of the Secretary of State to consent to the transfer or grant is secured in certain circumstances, and, as specified in Article 5(6) in those circumstance to consult the MMO before giving consent to the transfer or grant of powers under the deemed marine licences.</p> <p>Further, where consent is not required, because prior consent has already been given by the Secretary of State for such transfer via the making of the DCO in the terms proposed, notice must be given to the Secretary of State and, where the transfer or grant relates to offshore works, the MMO before the transfer takes effect (Article 5(9)). The notice must be given at least 14 days in advance of the transfer taking effect and must include all of the details set out in Article 5(10), including the name and contact details of the person to whom the benefit will be transferred or granted, which provisions are to be transferred or granted and when the transfer or grant will take effect. The notice must also be accompanied by a copy of the document effecting the transfer or grant, signed by the person who will have the benefit of the powers.</p> <p>Consequently, it can be seen that the details to be provided to the Secretary of State and MMO are sufficient to enable the MMO to update and maintain the register of persons having the benefit of a deemed marine licence and from what date.</p> <p>This process also ensures that the MMO are able to enforce licence provisions against the person with the benefit of the relevant powers. The Applicant notes that, whilst provisions of the nature of those included in the Rampion 2 Draft Development Consent Order [REP4-004] have been included in numerous previous DCOs for offshore wind farms, the MMO do not suggest that any difficulties with enforcement have occurred to date. Neither has there been any suggestion that the absence of a specific power for the MMO to record a transfer or grant of a deemed marine licence pursuant to a DCO for an offshore wind farm has caused difficulties in the past.</p> <p>When considering the process provided in the Draft Development Consent Order [REP4-004] as set out above, it can be seen that the process is not cumbersome, more administratively burdensome, slower or less reliable, than the regime set out in section 72 of the Marine and Coastal Access Act 2009 as has been suggested; to the contrary the process is straightforward, yet secures the provision of all necessary information for the MMO, particularly when the transfer or grant is to a person identified in article 5(8).</p> <p>In relation to the MMO's concerns regarding overlap between article 5(2) and 5(3), the Applicant has amended the Draft Development Consent Order [REP4-004] to include the wording '(excluding the deemed marine licences)' in article 5(2); this removes this area of concern.</p> <p>Whereas the MMO has raised concerns about use of the word 'grant' in the context of a marine licence. the Applicant notes that the terminology is used in relation to the</p>

Ref	Deadline 4 submission	Applicant's response
		<p>transfer or grant of other powers under the Order, and in so doing it follows the former model provisions. The same terminology is used in respect of the deemed marine licence to distinguish between the transfer of benefits of the deemed marine licence permanently, or for a limited period of time. Notwithstanding the MMO's concerns regarding the ability of the undertaker to 'grant' a 'new' deemed marine licence it is clear that article 5(3) only permits the transfer or grant of the whole of a deemed marine licence.</p> <p>The Applicant also notes that wording of article 5(2) previously reflected that used in the East Anglia One North and Two Offshore Wind Farm Orders, and following the changes to expressly exclude deemed marine licence it now reflects the wording used in the Hornsea Project Four Offshore Wind Farm Order</p> <p>It is noted that the Examining Authority Reports and Decision Letters referred to in the MMO's representation do not include extensive rationale for the transfer provisions but it is also clear that the MMO has presented its argument for exclusion of these provisions in the various Orders but the Examining Authorities and Secretary of State have been unpersuaded to change them. The Applicant has set out above its reasoning for the inclusion of the transfer provisions which are considered necessary and appropriate for inclusion to facilitate the efficient delivery of the Proposed Development and its subsequent operation, including the required transfer of transmission assets to the OFTO, without threat of enforcement action due to delays in processing of an application by the MMO.</p> <p>The position adopted by the Applicant is also consistent with the content of Advice Note 15, which acknowledges that powers to transfer deemed marine licences are appropriately included in a development consent order:</p> <p><i>"28.3 Sub-section 72(7) of the MCAA2009 provides that, on application by the licensee, the licensing authority which granted (or is deemed to have granted) a Deemed Marine Licence may transfer it from the licensee to another person. Whilst this provision does not expressly allow only part of a Deemed Marine Licence to be transferred, sub-section 120(5) (a) of the PA2008 provides that a DCO may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in a DCO, which would include this provision. It is therefore considered that there is no legal reason to prevent a DCO from allowing part of a Deemed Marine Licence to be transferred, although there may be operational difficulties with such an approach including monitoring compliance and taking enforcement action."</i></p>
2.12.2	1.2.2 If the application for the DCO is granted, the MMO will be the regulatory authority responsible for the enforcement of the provisions of the DMLs. As a result, it has to retain a record of the DML and who holds the benefit of that license in order to be able to fulfil its statutory responsibilities as it does in respect of any other Marine Licence.	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.
2.12.3	1.2.3 The Marine and Coastal Access Act ("the 2009 Act") addresses the procedure for transfer of a Marine Licence as follows: <i>"(7) On an application made by a licensee, the licensing authority which granted the licence— (a) may transfer the licence from the licensee</i>	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.

Ref	Deadline 4 submission	Applicant's response
<i>to another person, and (b) if it does so, must vary the licence accordingly. (8) A licence may not be transferred except in accordance with subsection (7).</i>		
2.12.4	1.2.4 The purpose of these provisions is to ensure that there is at all times a record of the person who has the benefit of the licence. That is because pursuant to the 2009 Act section 65(1), no person may carry on a licensable marine activity, or cause or permit any other person to carry on such an activity, except in accordance with a marine licence granted by the appropriate licensing authority. A person who contravenes section 65(1), or fails to comply with any condition of a marine licence, commits an offence (see section 85(1) of the 2009 Act).	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.
2.12.5	1.2.5 Thus, it is a key part of the enforcement provisions of the 2009 Act, that the MMO maintains a record of the person who has the benefit of a marine licence at all times	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.
2.12.6	1.2.6 In practice, the process of obtaining a transfer is relatively quick. Whilst the MMO officially indicates that this can take up to 13 weeks, it is an administrative task and in practice often much quicker and around 6 weeks. The MMO is not required to consult with any other body. As far as it is aware, the MMO has never refused a request to transfer a Marine Licence	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.
<u>The current draft DCO Article 5 Procedure</u>		
2.12.7	1.2.7 As presently drafted, dDCO Article 5(2) creates a power whereby the undertaker can: a) transfer to another person ("the transferee") any or all of the benefit of the provisions of this Order (including the deemed marine licences); or b) grant to another person ("the lessee") for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of the Order (including the deemed marine licences).	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.
2.12.8	1.2.8 These provisions are also duplicated in large part by Article 5(3) which provides a power to the undertaker to: a) where an agreement has been made in accordance with sub-paragraph (2)(a), transfer to the transferee the whole of any of the deemed marine licences and such related statutory rights as may be agreed between the undertaker and the transferee; or b) where an agreement has been made in accordance with sub-paragraph (2)(b), grant to the lessee, for the duration of the period mentioned in sub-paragraph (2)(b), the whole of any of the deemed marine licences and such related statutory rights as may be so agreed	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.
2.12.9	The consent of the Secretary of State to a transfer/grant pursuant to Article 5(2) or 5(3) is required except where Article 5(8) applies. Where the Secretary of States consent is required, the dDCO provides that: a) The undertaker must consult the Secretary of State before making an application for consent under this article by giving notice in writing of the proposed application (see dDCO Article 5(5)); and b) The Secretary of State must consult the MMO before giving consent to the transfer or grant to another person of the benefit of the provisions of the deemed marine licences (see dDCO Article 5(6))	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.

Ref	Deadline 4 submission	Applicant's response
2.12.10	<p>1.2.10 The Secretary of State's consent to the transfer or grant of a DML is not required and thus there is no requirement for consultation with the MMO prior to the undertaker making that transfer or grant where:</p> <ul style="list-style-type: none"> a) the transferee or lessee is the holder of a licence under section 6 of the 1989 Act (licences authorising supply etc.); or b) the transferee or lessee is a holding company or subsidiary of the undertaker; or c) the time limits for claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and— <ul style="list-style-type: none"> i. no such claims have been made, ii. any such claim has been made and has been compromised or withdrawn, iii. compensation has been paid in final settlement of any such claim, iv. payment of compensation into court has taken place in lieu of settlement of any such claim, or v. it has been determined by a tribunal or court of competent jurisdiction in respect of any such claim that no compensation is payable 	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.
2.12.11	<p>1.2.11 The dDCO also provides for 14 days written notice to be provided to the MMO prior to a transfer or grant taking effect and for certain details to be provided (dDCO Article 5(11)). These include a copy of the document effecting the transfer or grant signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted (dDCO Article 5(10)(b)).</p>	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.
<u>The Basis for Objection</u>		
2.12.12	<p>1.2.12 The MMO raises objection to Article 5 in relation to:</p> <ul style="list-style-type: none"> a) The procedure seeking to duplicate the existing statutory regime set out in s72 of the 2009 Act b) The proposed procedure being cumbersome, more administratively burdensome, slower and less reliable than the existing statutory regime set out in s72 of the 2009 Act; c) The overlap in relation to DMLs as between Article 5(2) and 5(3); d) The power for an undertaker to grant a DML; e) The power to grant a DML for a period of time; f) The basis for disapplication of the need for Secretary of State's consent to a transfer/grant for DML is unrelated to any matters relating to marine licensing. g) The absence of any power provided to the MMO to change the DML held in its records to reflect any transfer. h) The overall effect on the ability of the MMO to enforce the marine licensing regime in respect of any transferred or granted DML. 	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.
<u>Previous DCOs</u>		
2.12.13	<p>1.2.13 It is acknowledged that DCO's previously granted have removed the effect of s72 of the 2009 Act and made provision for the transfer of DMLs including by way of example, Sheringham Dudgeon OFW, Times Tideway Tunnel DCO and Sizewell C DCO.</p>	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.
2.12.14	<p>1.2.14 However, it is to be noted that in very few if any do the relevant Examining Authorities ("ExAs") explain the rationale for the approach adopted. The same is true of the relevant decision letters. To date, the Applicant has not provided the MMO with any ExA Report or</p>	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.

Ref	Deadline 4 submission	Applicant's response
2.12.15	Decision letter which explains why the approach it seems to adopt in the dDCO is appropriate nor indeed to be preferred to the existing statutory procedures.	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.
2.12.16	1.2.16 The Applicant has pointed to the Dogger Bank Creyke Beck Offshore Wind Farm as a precedent. The ExA in that case addressed the issue of transfer at paragraph 15.25 and following. At Para15.26 it explained that the Applicant in that case and the MMO had reached agreement in relation to the issue of transfer as follows: "The MMO also requested that additional drafting be included in Article 8, such that it would be consulted prior to any transfer of the benefits of the Order, providing details such as the person responsible for carrying out the activities, location and timing of works etc (REP-274). The applicant and the MMO reached agreement on this point, such that version 5 of the draft DCO included the proposed insertion of a clause at Article 8(7) which would require the undertaker to consult the MMO prior to the transfer to another person; and inclusion of an amendment to Article 8(9) which requires the MMO to be informed in writing within 14 days (previously 21 days) should any agreement come into effect which transfers the relevant provisions to another person (REP480). These proposed changes have been carried forward into Article 8 of the ExA's recommended DCO, together with some minor changes to the drafting in the interests of clarity, which don't materially alter the intention and effect of the articles which have been subject to examination."	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.
2.12.17	1.2.17 Thus, the Dogger Bank decision did not determine that the mechanism now proposed is to be preferred to the statutory mechanisms – rather it was a compromise reached between the parties in that case. The MMO has consistently challenged provisions of this nature in draft DCOs as the existing statutory procedure is to be preferred to mitigate risk on all parties by using established mechanisms	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.
2.12.18	1.2.18 None of the other ExA Reports or Decision Letters relating to the projects referred to by the Applicant (Hornsea Four Offshore Wind Farm Order 2023, East Anglia One North Offshore Wind Farm Order 2022, East Anglia Two Offshore Wind Farm Order 2022, Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024, Sizewell C or Thames Tideway Tunnel) contain any rationale for the transfer provisions. In other words, to date the Applicant has not identified any reasoned justification in any previous decision which explains why the transfer process which it proposes is justified and to be preferred over the existing statutory mechanism.	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.
2.12.19	1.2.19 The MMO, of course, accept that there is a need for consistency in decision making. However, a decision maker is not bound by previous decisions and can depart from them where there is good reason to do so.	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.
2.12.20	1.2.20 If the Secretary of State in the present case determined that on balance, the existing statutory mechanisms relating to transfer of marine licenses is to be preferred to the mechanism proposed in the dDCO, then it is open to him to so determine provided he gives reasons for so doing. The absence of any reasoned decision which determines the point previously and which provides a rationale for departing the existing statutory mechanism is a reason to look at this issue again.	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.

Ref	Deadline 4 submission	Applicant's response
<u>Materially Inferior Procedure</u>		
2.12.21	1.2.21 As explained above, the statutory system for transfer requires an application to the MMO. There is no further consultation, and the transfer is given effect by amendment to the licence holder section of the Marine Licence. The MMO does not have any relevant statutory or non-statutory policy relating to the transfer of a licence – it is essentially a purely administrative act to ensure that the licence contains the name of the person with the benefit of the licence. As explained, as far as the MMO is concerned it has never refused an application for a transfer	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.
2.12.22	1.2.22 In contrast, the dDCO Article 5 procedure requires: a) Pre-application consultation with the Secretary of State b) An application to the Secretary of State; c) Consultation with the MMO; d) A decision by the Secretary of State; e) Notification of the decision;	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.
2.12.23	1.2.23 Given the contrast between the two procedures, the MMO does not consider that the dDCO procedure has any material procedural or administrative advantages over the existing statutory process. Indeed, the dDCO procedure is decidedly more complex, is more administratively burdensome for all parties, and will take longer to give effect to a transfer. The MMO believes that as a result the dDCO should be amended to remove the mechanisms to enable transfer of the DMLs and to remove the exclusion of the existing s72 process; the statutory regime which already exists is a much better option for all and should remain applicable	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.
<u>The Overlap</u>		
2.12.24	1.2.24 There is an overlap in the powers set out in the dDCO Article 5(2) and Article 5(3) in that the DMLs can be transferred under both. It is entirely unclear why this is required.	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.
2.12.25	1.2.25 The equivalent provision in the Sheringham Dudgeon scheme to dDCO Article 5(2) is at Appendix A. It provides: 5(2) Subject to paragraphs (6), (7) and (8) the undertaker may with the written consent of the Secretary of State— (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order (excluding the deemed marine licences referred to in paragraph (3) below) and such related statutory rights as may be agreed between the undertaker and the transferee; and (b)) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of the Order (excluding the deemed marine licences referred to in paragraph (3) below) and such related statutory rights as may be so agreed. except where paragraph (8) applies, in which case no consent of the Secretary of State is required.” (emphasis added)	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.
2.12.26	1.2.26 Thus, in the Sheringham case, Article 5(2) did not address the transfer of a DML at all nor did it provide for the grant of a DML by the undertaker; rather the powers in relation to DMLs were addressed in Article 5(3) of the Sheringham DCO: “5(3) Subject to paragraph (6),	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.

Ref	Deadline 4 submission	Applicant's response
	the undertaker may with the written consent of the Secretary of State and where an agreement has been made in accordance with paragraph (2)(a), transfer to the transferee the whole of any deemed marine licences and such related statutory rights as may be agreed between the undertaker and the transferee, except where paragraph (8) applies, in which case no consent of the Secretary of State is required.”	
2.12.27	Thus, the Sheringham DCO provided only for the transfer of a DML to another party. <u>It did not provide the ability to grant a DML for a period agreed by the undertaker.</u>	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.
2.12.28	1.2.28 The wording which has been changed in the dDCO in the present case to include marine licences within Article 5(2) has no precedent which the MMO has been able to identify and has not been justified by the Applicant.	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.
2.12.29	1.2.29 The Sheringham DCO addressed the powers relating to the transfer of DMLs separately from the transfer of other rights i.e., the DML related powers were addressed in Article 5(3) and not 5(2).	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.
2.12.30	1.2.30 The drafting of dDCO in the present case for Article 5(3) continues to relate to DMLs. But that has given rise to an unnecessary and confusing duplication of powers as between dDCO Articles 5(2) and 5(3).	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.
2.12.31	1.2.31 If the dDCO is to contain provisions relating to the transfer of a DML, it is much better to amend dDCO Article 5(2) to exclude DMLs and to have transfer addressed in a separate provision i.e. 5(3) as was done in Sheringham. The overlap of powers must be addressed by further changes to the draft.	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.
	<u>The Grant of a DML</u>	
2.12.32	1.2.32 dDCO Articles 5(2)(b) and 5(3)(b) seek to make provision for the undertaker to “grant” another person the “benefit of the provisions of the Order (including the deemed marine licences) and such related statutory rights as may be so agreed” or “the whole of any of the deemed marine licences and such related statutory rights as may be so agreed”.	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.
2.12.33	1.2.33 This appears to be drawn from Article 9(1)(b) of the Sizewell C DCO, although it is unclear from the wording of that provision whether the power to grant “the benefit of the provisions of this Order and such related statutory rights” includes the power to grant a new DML to a third party. Further, the rationale for the inclusion of such a power or the basis upon which it is to be exercised is not explained in the DCO, the ExA Report or the Decision Letter for the Sizewell C project.	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.
2.12.34	1.2.34The Applicant has not justified or explained: a) Why it is necessary for it to have the power to grant a DML; b) Why it is necessary for it to have the power to grant a DML when it would have a power to transfer a DML; c) The basis on which such a power to grant will be exercised; d) The basis on which it will determine whether or not grant a DML e) The basis on which it will determine the conditions to be imposed on the grant of a DML; f) Why it is appropriate for it to be able to grant DMLs without the consent of the Secretary of State or the MMO	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.

Ref	Deadline 4 submission	Applicant's response
2.12.35	1.2.35 The MMO considers that the power sought for the undertaker to grant a DML would confuse and usurp its statutory function. It would allow licences to be granted on terms wholly different from those accepted as part of the DCO process. The power to grant a DML should therefore be removed from the dDCO.	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.
2.12.36	1.2.36 In the event that its primary position that the existing statutory mechanism should remain applicable is rejected, the MMO considers that, at most, the power to transfer the benefit of an existing DML to another person is all that is required.	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.
<u>A Time Limited DML</u>		
2.12.37	1.2.37 dDCO Articles 5(2)(b) and 5(3)(b) also seek to make provision for a DML to be granted by the undertaker to another person for a limited period of time	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.
2.12.38	1.2.38 The only precedent for this provision which the MMO has found is Article 9(1)(b) of the Sizewell C DCO, to the extent that that power applies to DMLs (which is unclear). The Sheringham DCO does not provide a power for the undertaker to grant a DML for a limited period of time.	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.
2.12.39	1.2.39 The Applicant has not explained why these provisions are necessary or why a departure from the statutory provisions within the 2009 Act is justified.	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.
2.12.40	1.2.40 In the event that its primary position that the existing statutory mechanism should remain applicable is rejected, the MMO considers that, if the intention is to enable the transfer of the benefit of a DML to a third party for a defined period of time, with the benefit of that DML then reverting to the undertaker at the end of that period, a provision can be drafted to give effect to this.	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.
<u>Disapplication of the Secretary of State's Consent</u>		
2.12.41	1.2.41 As explained above, Article 5(8) disapples the need for the consent of the Secretary of State to be obtained and the need for any consultation with the MMO where: (a) the transferee or lessee is the holder of a licence under section 6 of the 1989 Act (licences authorising supply etc.); or (b) the transferee or lessee is a holding company or subsidiary of the undertaker; or (c) all claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed or been resolved	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.
2.12.42	1.2.42 Whilst it is recognised that the drafting here reflects earlier DCOs, the rationale for the removal of the need for consent or consultation when any of these criteria are met has not been explained. The Applicant has not explained why the fact that the transferee holds a s6 licence should mean that the consent of the Secretary of State is not required nor that consultation with the MMO is unnecessary. The Applicant has not explained why a transfer of a DML to a holding company or subsidiary of the undertaker should mean that the consent of the Secretary of State is not required nor that consultation with the MMO is unnecessary.	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.
2.12.43	1.2.43 Lastly, it is entirely unclear to the MMO why there should be a need for consultation with the Secretary of State (and consultation with the MMO) relating to a transfer of a DML	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.

Ref	Deadline 4 submission	Applicant's response
	prior to the resolution of claims for compensation for land acquisition but not afterwards. The rationale for this provision has not been explained by the Applicant.	
2.12.44	1.2.44 In the absence of any clear justification for excluding a consent process, consent should be required to reflect the process in section 72 of the 2009 Act. In other words, a transfer of a DML should not be given effect unless it has been approved by a decision maker. The MMO's primary position is that the statutory mechanism should remain applicable and that it should remain the relevant decision maker. If that is rejected then the next best option would be for the Secretary of State to be the relevant decision maker but unable to consent to the transfer without the approval of the MMO. If that is rejected, then the next best option would be for the Secretary of State to be the relevant decision maker in consultation with the MMO. It is not acceptable, however, for the Applicant (or any successor) to be able to transfer a DML to whomever they wish whenever they wish which is eventually the effect of the provisions in the dDCO.	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.
	<u>Power to Amend DMLs to Reflect a Transfer</u>	
2.12.45	1.2.45 The MMO is a statutory body. As a result, it can only act where it has statutory power to do so. The dDCO provides for the transfer of a DML, however it does not give the MMO the power to amend the DML it holds in its records upon notification that a transfer is to occur. This has the potential to cause real difficulties going forward since, in the absence of such a power, the MMO records will not be changed. This is likely to cause significant administrative difficulties and could result in obstacles to enforcement.	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.
2.12.46	1.2.46 Such a confusion is but one symptom of the complications which result from the dDCO's proposed transfer mechanism. This reinforces the MMO's primary position that the existing statutory mechanism is to be preferred and to remain applicable.	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.
	<u>Overall Effect on Ability to Enforce</u>	
2.12.47	1.2.47 As drafted, the ability to transfer licences, grant licences for a limited time, to transfer/grant without consultation and without providing a power for the MMO to amend its records, will give rise to significant enforcement difficulties for the MMO and has the potential to prejudice the operation of the system of marine regulatory control in relation to the proposed development. Further, the dDCO procedure is administratively burdensome and time consuming.	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.
2.12.48	1.2.48 All of these difficulties can be avoided by retaining the existing statutory regime which is simple to operate and relatively speedy. The best way forward for all concerned is to retain the statutory procedure for transfer as set out in s72 of the 2009 Act. This will also require changes to Part 1 Paragraph 7 of each dDML	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.
	<u>Schedule 11 and 12 (Deemed Marine Licences)</u>	
	<u>Part 1: paragraph 9 & Part 2: Condition 3(5)</u>	
2.12.49	1.2.49 The MMO seeks changes to Part 1 paragraph 9 and Part 2 Condition 3(5) to both DMLs. The MMO's proposed amendments are shown in bold (the Applicant's wording struck through):	The Applicant directs the MMO to the Applicant's response to reference 2.12.1 above.

Ref	Deadline 4 submission	Applicant's response
2.12.50	<p><i>“Part 1: Condition 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 will not give rise to any material new or materially different environmental effects from those assessed in the environmental statement.”</i></p> <p><i>Part 2: 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 will not give rise to any material new or materially different environmental effects from those assessed in the environmental statement</i></p> <p>1.2.50 These changes are necessary to ensure that the power to amend or vary is consistent with the requirements of the EIA regime as explained in the case of R. (Barker) v Bromley LBC [2007] 1 A.C. 470. That case concluded that EIA will be required at stages subsequent to an initial grant of consent where those likely significant effects were not identified at the earlier consenting stage. It follows that a mechanism to permit a variation or amendment will not be lawful until it prevents any possibility of a materially new or different significant environmental effects arising as a result of the variation or amendment</p>	The Applicant directs the MMO to the Applicant’s response to reference 2.12.1 above.
Condition 10(1)		
2.12.51	<p>1.2.51 Condition 10(1) Force Majeure provides as follows: <i>“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.”</i></p>	The Applicant directs the MMO to the Applicant’s response to reference 2.12.1 above.
2.12.52	<p>1.2.52 The MMO has previously requested the removal of this clause. That is because it unnecessarily duplicates the effect of s.86 of the 2009 Act. If it is to be retained, then the relationship between this clause and section 86 of the 2009 Act should be clarified.</p>	The Applicant directs the MMO to the Applicant’s response to reference 2.12.1 above.
2. MMO Comments on Applicant’s update to Draft DCO (Revision D)		
2.12.53	<p>2.1 The MMO have included an amended table from our Deadline 3 response, which details the outstanding issues relating to the DCO.</p>	The Applicant provided a response to the points set out in this table at line 14 of Applicant's response to Action Points arising from ISH2 and CAH1 [REP4-074] (updated at Deadline 5) submitted at Deadline 4 to which the following is added (see inset Table 1):

Ref	Deadline 4 submission		Applicant's response
2.12.54	Table 1 - MMOs outstanding comments on the draft Deemed Consent Orders and Deemed Marine Licences		
Main DCO			
	Part 2 Principal Powers	MMO Comments and amendments	Applicant's response
	Schedule 11 – Deemed Marine Licence		
	Part 1		
	2.(b) “...(transmission);;”	Remove second “;”	
	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	Please see our legal representation by Reuben Taylor KC in section 1 of this response.	Please see the Applicant's response under responses 2.12.1 to 2.12.6 above.
	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: <i>“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 will not give rise to any material new or materially different environmental effects from those assessed in the environmental statement.”</i>	The Applicant considers that the changes proposed by the Marine Management Organisation (MMO) are unnecessary. The wording of the provision echoes the wording of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (“the EIA Regulations”) in requiring consideration of the likely significant effects of the Proposed Development on the environment, rather than establishing absolute certainty on what they will be. It also reflects the wording used in multiple previous DCOs including East Anglia One North and Two, Hornsea Four and Sheringham Shoal and Dudgeon Extensions Orders. It is also included in DCOs for other infrastructure projects including Southampton to London Pipeline Development Consent Order 2020 and The National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024. The requirements of the EIA Directive and the EIA Regulations were recently discussed by the Supreme Court in <i>R(on the application of Finch on behalf of the Weald Action Group) v Surrey County Council and others [2024] EWCA Civ 187</i> at paragraphs 72 and 73 of the judgement which aligns with the Applicant's submissions and the previously made order referred to: <i>“72. Typically, when questions of causation arise in law the inquiry involves looking backwards to determine whether one past event caused another past event. In determining the required scope of an EIA, however, the inquiry is forward-looking. The question is: on the assumption that the project goes ahead, what possible future effects on the environment will constitute “effects of the project” which (if significant)</i>

Ref	Deadline 4 submission	Applicant's response
	<p>Part 2 Conditions</p> <p>Condition 3(2) “[...] All operations and maintenance activities shall be carried out in accordance with the submitted operations and maintenance plan.”</p> <p>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.”</p> <p>Condition 4. Any time period given in this licence given to either the undertaker or the MMO may be extended with</p>	<p><i>must therefore be assessed? The EIA Directive answers that question by imposing the test of whether the effect is “likely”. Thus, article 5(1)(b) requires the information provided by the developer to include “a description of the likely significant effects of the project on the environment” (emphasis added) and Annex IV further specifies what this obligation involves.</i></p> <p><i>73. The term “likely” can bear more than one meaning. It can mean “more probable than not”, or it may connote some other (lesser or greater) degree of probability. A guide provided by the Intergovernmental Panel on Climate Change, quoted with approval by the European Commission in its 2013 Guidance at p 40, equates the term “likely” with a probability of between 66% and 100%. Arguably, this is too strict a standard. But, as I will soon discuss, there is no need to express any view on this question to decide this case.”</i></p> <p>The Applicant has amended the Draft Development Consent Order [REP4-004] at Deadline 5 to include wording that provides for submission of the operations and maintenance plan for approval, and for activities to be carried out in accordance with the approved plan.</p> <p>Please see the response above.</p>
	<p>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.”</p> <p>This should accord with the same standard proposed in Part 1(9), above. MMO proposed changes in bold:</p> <p><i>“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 assessed in the environmental statement.”</i></p> <p>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).</p>	

Ref	Deadline 4 submission	Applicant's response
	<p>the written agreement of the other party.</p>	
	<p>Condition 8(3) "... structures above 60meters"</p>	<p>" Needs space, e.g. "... structures above 60 meters"</p>
	<p>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."</p>	<p>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:</p> <p><i>"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 hazardous to other marine users to be removed from the seabed at the undertaker's expense if reasonable to do so."</i></p> <p>The MMO would like to update the Applicant with regards to Condition 9(1) that we are still working with our Strategic Renewables Unit (SRU) to reach the final wording for this condition. The MMO SRU are developing new wording for this condition that will be included in all future DCO's.</p>
	<p>Condition 10(1) Force Majeure "If, due to stress of weather or any other cause</p>	<p>Please refer to comments in section 1.</p>

Ref	Deadline 4 submission	Applicant's response
	<p>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.”</p>	
	<p>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.</p>	<p>Condition should be removed in its entirety. 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</p>
	<p>Condition 16(2)(b) “(2) Subject to receipt from the undertaker of specific proposals pursuant to this condition, the pre-construction 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 sea bream, and peat and clay</p>	<p>Considered too limiting, see suggested amendments in bold: “(2) Subject to receipt from the undertaker of specific proposals pursuant to this condition, the pre-construction 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 sea bream, and peat and clay exposures and any other species or features as set out within the outline in-principle monitoring plan.”</p>

Ref	Deadline 4 submission	Applicant's response	
	<p>exposures as set out within the outline in-principle monitoring plan.”</p>		
	<p>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.”</p>	<p>unclear what the ‘agreed timetable’ referred to here is, applicant is asked to clarify.</p>	
	<p>Schedule 12: Deemed Marine Licence</p>		
	<p>Part 1</p>		
	<p>4.(e) “plastic and synthetic material” 4.(g) “... other chemicals ...</p>	<p>Synthetic materials’ and ‘other chemicals’ are potentially very broad categories, is the MMO happy with this or do these need additional definitions or qualifications? Question to be raised internally with MMO</p>	<p>The Applicant awaits further clarification from the Marine Management Organisation (MMO) as to whether this wording is acceptable.</p>
	<p>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.”</p>	<p>Please see section 1 of this response for further information on the MMOs continued position on Part 1 (7).</p>	<p>Please see above in relation to Schedule 11.</p>
	<p>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</p>	<p>The MMO’s previous comments have been only partially integrated. Strengthening of the wording for clarity and to ensure MMO is able to regulate sufficiently robustly. MMO proposed changes in bold: <i>“Any amendments to or variations from the approved plans, protocols or statements must</i></p>	<p>Please see above in relation to Schedule 11.</p>

Ref	Deadline 4 submission	Applicant's response
	<p>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.</p>	<p><i>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 will not give rise to any material new or materially different environmental effects from those assessed in the environmental statement."</i></p>
	<p>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.</p>	<p>MMO would still 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).</p>
	<p>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."</p>	<p>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.</p> <p><i>"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 hazardous to other marine users to be removed from the</i></p>
		<p>Please see above in relation to Schedule 11.</p>

Ref	Deadline 4 submission	Applicant's response
		<p><i>seabed at the undertaker's expense if reasonable to do so."</i></p> <p>The MMO would like to update the Applicant with regards to Condition 9(1) that we are still working with our Strategic Renewables Unit (SRU) to reach the final wording for this condition. The MMO SRU are developing new wording for this condition that will be included in all future DCO's.</p>
	<p>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."</p>	<p>Please refer to comments in section 1.</p>
	<p>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."</p>	<p>Condition should be removed in its entirety. The MMO has internal 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.</p>
	<p>Condition 16 (2)(b) "(2) Subject to receipt from the undertaker of specific</p>	<p>Considered too limiting, see suggested amendments in bold: "(2) Subject to receipt from the undertaker of specific proposals</p>

Ref	Deadline 4 submission	Applicant's response
	<p>proposals pursuant to this condition, the pre-construction 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 sea bream, and peat and clay exposures as set out within the outline in-principle monitoring plan.”</p> <p>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.”</p>	<p>pursuant to this condition, the pre-construction 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 sea bream, and peat and clay exposures and any other species or features as set out within the outline in-principle monitoring plan.”</p> <p>unclear what the ‘agreed timetable’ referred to here is, Applicant is asked to clarify</p>
3. MMO Comments on the Statements of Commonality of Statements of Common Ground		
2.12.55	<p>3.1 The Applicant submitted an updated Statements of Commonality of Statements of Common Ground (Rev B) at Deadline 2. Since no further updated versions have yet been submitted the MMO refers to comments made in Section 3 of our Deadline 3 response (REP3-076).</p>	<p>Noted, the Applicant has no further comments on this matter.</p>
2.12.56	<p>3.2 The MMO await the submission of the applicant's updated Statement of Commonality of Statements of Common Ground (SoCG) expected at Deadline 4.</p>	<p>Noted, the Applicant has no further comments on this matter.</p>
2.12.57	<p>3.3 The MMO considers that there remain areas of disagreement that have not yet been resolved. The MMO would welcome a meeting with the Applicant to discuss these in detail prior to the next deadline. The last meeting between the applicant and the MMO to discuss issues pertaining to the SoCG was 23rd February 2024</p>	<p>A meeting between the Applicant and the Marine Management Organisation (MMO) to discuss the Statement of Common Ground (SoCG) and the Statement of Commonality of SOCGs took place on 04 July 2024. A revised draft of the SoCG was issued to the MMO following the page turn for their review and subsequent sign off for Deadline 5. A further revision of the SoCG will be issued at Deadline 6.</p>

Ref	Deadline 4 submission	Applicant's response
4. MMO Response to Action Points arising from Issue Specific Hearing 2.		
2.12.58	<p>4.1 The MMO has consulted our Technical Advisor, the Centre for Environment, Fisheries and Aquaculture Science (Cefas) to provide advice on the following Action Point: 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.</p>	<p>Noted, the Applicant has no further comments on this matter.</p>
4.2 Underwater Noise comments		
2.12.59	<p>4.2.1 The MMO support that the Applicant is considering (and proposing) the application of various noise abatement systems and options. The Applicant has provided further information in the form of the following two documents: Appendix H FS: Noise Thresholds for Black Seabream (REP3-051), and Appendix I MM: Noise Abatement presented in the In Principle Sensitive Features Mitigation Plan (REP3-051), has therefore been modelled for monopile and multileg foundations. The underwater noise abatement of up to 20 dB is to be achieved through the use of a combination of measures, comprising the double big bubble curtain (DBBC) as the principal measure, together with, for the purposes of the modelling and zoning exercise, the Piling Under Limited Stress Equipment (PULSE) or MENCK Noise Reduction Unit (MNRU) hammer mitigation, although the Applicant notes that the actual equipment to be used will be selected based on the most appropriate equipment available at the time. The MMO agree with the Applicant that the primary objective of the mitigation is to achieve the required (and also greatest) noise reduction levels (in respect of an agreed threshold) rather than specify precise equipment at this stage.</p>	<p>The Applicant welcomes the Marine Management Organisation's (MMO's) agreement and confirms that the main objective of the proposed mitigation is to achieve the appropriate and sufficient noise reduction levels rather than specify precise equipment at this stage.</p> <p>As detailed in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), the Applicant has committed to the use of Double Big Bubble Curtains (DBBC) throughout the piling campaign. The implementation of this mitigation will further reduce the impact ranges of underwater noise (including behavioural effect ranges) to sensitive features such as spawning herring within the vicinity of the Proposed Development in comparison to the previous commitment to use at least one noise abatement system throughout the piling campaign (which assumed, at minimum, 6 dB reduction for all piling works). The Applicant would highlight that this is a substantial additional commitment to mitigation.</p> <p>Commitment C-265 has been updated accordingly to reflect this proposed mitigation. The updated commitment is as follows: C-265: <i>"Double big bubble curtains will be deployed as the minimum single offshore piling 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:</i></p> <ul style="list-style-type: none"> • <i>sensitive receptors at relevant Marine Conservation Zone (MCZ) sites and reduce the risk of significant residual effects on the designated features of these sites;</i> • <i>spawning herring; and</i> • <i>marine mammals."</i> <p>The mitigated impact ranges afforded by the implementation of DBBC throughout the piling campaign have been presented relative to key sensitive features within the vicinity of the Proposed Development the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), and the Applicant's Post Hearing Submission – Issue Specific Hearing 1 Appendix 9 – Further Information for Action Points 38 and 39 – Underwater Noise Revision B [REP4-061].</p>

Ref	Deadline 4 submission	Applicant's response
2.12.60	<p>4.2.2 As previously advised by the MMO (REP3-076) evidence (i.e., references) should be provided to support the dB reduction for each option proposed, including with respect to frequency. [The efficacy of a noise abatement system to reduce the risk of impact depends on the frequency range at which sound energy is reduced and on the target species, as each species is sensitive to a certain frequency range].</p>	<p>The mitigated impact ranges from the implementation of DBBC (as defined using the 141 dB SELss disturbance threshold), further mitigate the underwater noise contours away from key sensitive features such as spawning herring.</p> <p>It is worth noting that the mitigated impact ranges from the implementation of DBBC, as defined using the overly precautionary 135 dB SELss threshold (the use of which the Applicant does not support), also do not overlap with herring spawning grounds, or areas of high densities of eggs and larvae. The mitigated noise contours are presented in the Applicant's Post Hearing Submission – Issue Specific Hearing 1 Appendix 9 – Further Information for Action Points 38 and 39 – Underwater Noise Revision B [REP4-061].</p> <p>The Applicant confirms that additional work has been undertaken looking into the efficacy of Noise Abatement Systems (NAS). This work is detailed in Information to support efficacy of noise mitigation / abatement techniques with respect to site conditions at Rampion 2 Offshore Windfarm [REP4-067]. As detailed in Information to support efficacy of noise mitigation / abatement techniques with respect to site conditions at Rampion 2 Offshore Windfarm [REP4-067], in consideration of the site characteristics and noise abatement levels, and taking into consideration the outputs of live monitoring of numerous projects whereby NAS have been applied successfully, it is apparent that up to 20dB noise reduction can be achieved. This is through the use of a combination of measures, comprising the DBBC as the principal measure, together with an additional noise abatement measure, which will be selected based on the most appropriate equipment available at the time of construction. The impact thresholds for fish are not frequency dependent, and all before-and-after measurements on which the calculations of attenuation are based must be unweighted. The performance is achieved within depths of $\leq 40\text{m}$, current speeds of 0.48 to 0.76 m/s.</p> <p>The outputs of this work have been used to inform the revised In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5). Specifically, the Plan has been updated to reflect a 20 dB noise reduction from the use of DBBC and another noise abatement measure during the black bream nesting season, amongst other mitigation measures (including zoning, and piling sequencing). The Plan has also been updated to reflect the Applicant's commitment to use DBBC throughout the piling campaign (Commitment C-265).</p>
<p>4.3 Fisheries comments</p>		
2.12.61	<p>4.3.1 The information supplied in Appendix H (REP3-051) presents the results of an UWN modelling exercise used to define the extent of the array area which would fall within a piling exclusion zone based on modelling of the 135 dB SELss threshold (i.e., where mitigated piling cannot realistically be undertaken whilst maintaining a received noise level of less than 135 dB within the Kingmere MCZ). Exclusion zones for piling of monopile and multileg foundations based on modelling of the 135 dB SELss threshold are presented in Figures H-1 and H-3. Piling exclusion zones of monopiles and multileg foundations based on modelling of the 141 dB SELss threshold have also been included (Figures H-2 and H-4) for comparison. All scenarios include a noise abatement reduction of 20 dB, following the Applicant's</p>	<p>No response required from the Applicant.</p>

Ref	Deadline 4 submission	Applicant's response
2.12.62	<p>proposed approach of combining noise abatement measures of a Double Big Bubble Curtain together with the PULSE or MNRU hammer mitigation).</p> <p>4.3.2 Figures H-1 – H-4 show that UWN modelling based on the 135 dB SELss behavioural response threshold (as per Hawkins et al., 2014), produces larger piling exclusion zones within the Rampion array for both mono- and multileg (pin) piling scenarios, compared to modelling based on the unsupported 141 dB threshold. This is to be expected given that a lower behavioural response threshold will have a larger associated range of impact. The Applicant states that based on modelling of the 135 dB threshold, it will not be feasible to install monopile foundations between March-June in the eastern part of the array according to their zoning plan. The Applicant considers that the revised zoning exercise shows that piling in the eastern part of the array between March-June may still be possible if using multileg (pin-piled) foundations. The MMO does not support this as the Applicant has not yet committed to using multileg foundations for the project.</p>	<p>The Applicant wishes to clarify that the text on page 634 of 8.54 Applicant's Responses to Examining Authority's First Written Questions (ExQ1) [REP3-051] was submitted in an <u>incorrect form</u>. The Applicant highlights that, whilst the implementation of zoning to accommodate the reduced (stricter) noise threshold of 135 dB SELss would be extremely challenging in combination with other environmental and construction factors, it remains feasible to undertake piling activities within parts of the Offshore Array Area with the proposed mitigation in place for both multileg foundations using pin-piles and monopile foundation structures. The Applicant has submitted an updated version of, and explanation of the changes made, in Applicant's Response to ExA's First Written Questions - Fish and Shellfish - Appendix H (Document Reference 8.54.1) at Deadline 5.</p> <p>The Applicant confirms that the proposed piling restrictions for sensitive features (including black seabream) as defined using a threshold of 135 dB SELss for behavioural responses (based on the findings of Hawkins et al., 2014) were set out on request of the Examining Authority, to identify the potential implications of using the 135 dB threshold, on the piling zoning plans.</p> <p>The Applicant confirms that whilst, as identified in Applicant's Response to ExAs First Written Questions - Fish and Shellfish - Appendix H (Document Reference 8.54.1) piling in the eastern part of the array between March-June may still be possible if using multileg (pin-piled) foundations, the Applicant does not support the use of the 135 dB threshold to define piling zoning areas.</p> <p>As detailed in the revised In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), the mitigation measures are yet to be confirmed and, as such, this plan is considered 'in principle' until an optimised design for construction, and therefore clarity on the maximum parameters (such as wind turbine generator (WTG) foundation types) to be employed at the Proposed Development, is known. As detailed in Chapter 4: The Proposed Development, Volume 2 [APP-045], the type of WTG foundation to be installed will be determined from the results of geotechnical investigations, existing environmental sensitivities and final WTG selection. It is also possible that more than one type of foundation may be used across the Proposed Development, therefore the Applicant is not committing to the use of multileg foundations only. The Final Sensitive Features Mitigation Plan will be submitted to the MMO for approval, in consultation with Natural England, during the post-consent/pre-construction phase, based on the final design of Rampion 2.</p> <p>The Applicant also maintains their position that a 141 dB SELss behavioural threshold, as defined by Kastelein <i>et al.</i> (2017) is appropriate, as the stricter suggested 135 dB SELss threshold is based on a study undertaken within a quiet loch on fish not involved in any particular activity (i.e. not spawning), and it is therefore not considered appropriate to use this threshold within a much noisier area such as the English Channel (which is subject to high levels of anthropogenic activity and consequently noise) as the fish within this area would reasonably be expected to be</p>

Ref	Deadline 4 submission	Applicant's response
		<p>accustomed to higher levels of noise and would thus have a correspondingly lower sensitivity to disturbance by noise.</p> <p>The Applicant notes that (as detailed in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), the use of the 141 dB SELss behavioural threshold is supported by a study undertaken by Kastelein <i>et al.</i> (2017). Kastelein <i>et al.</i> (2017) reported a 50% initial startle response (sudden short-lived changes in swimming speed) which occurred at an SELss of 131 dB re 1 mPa² s for 31 cm seabass and 141 dB re 1 mPa² s for 44 cm seabass. As reported by Kastelein <i>et al.</i> (2017), the thresholds are based on startle responses of seabass, which could be a brief change in swimming speed, direction, or body posture, in at least one of a group of four fish, with a very limited time duration, as opposed to a full abandonment of the ensonified area. Furthermore, there was no evidence of any consistent sustained response to sound exposure by the study animals (changes in school cohesion, swimming depth, and speed) at levels up to 166 dB SELss. The Applicant therefore suggests the use of the disturbance threshold of 141 dB SELss (based on 44 cm seabass) as suitably precautionary for an impact assessment on nesting black seabream. This is as the observed effects from underwater noise from pile driving on seabass were so minor (no sustained responses observed), there are unlikely to be any adverse effects on their ecology (such as sustained disturbance to nesting behaviours). Therefore, this noise level is not considered to have any potential to trigger a significant effect on the black seabream population within the MCZ and nor is it even likely to have an individual effect on breeding success.</p>
2.12.63	<p>4.3.3 The Applicant also states that the revised modelling presented here indicates the proposed zoning approach for piling during July in the western part of the array is also not feasible under either monopile or multileg piling scenarios. It should be noted that the MMO have not supported this zoning plan based on modelling of the inappropriate 141 dB threshold and have repeatedly asked the Applicant to demonstrate the feasibility of this approach when modelled using the more appropriate 135 dB threshold.</p>	<p>The Applicant acknowledges the MMO's position regarding the disturbance thresholds and reiterates that the Applicant does not support the use of the 135 dB threshold to inform the piling zoning mitigation measures, for the reasons detailed in reference 2.12.62 above.</p>
2.12.64	<p>4.3.4 The Applicant's revised zoning exercise presents the areas of the Rampion 2 array in which it will <u>not be possible to pile</u> during the black sea bream spawning and nesting season (March to July, inclusive), based on modelling of 135 dB SELss threshold. The MMO notes that the figures provided in Appendix H do not fully represent the situation, as the UWN modelling carried out to determine the exclusion zones (i.e., the UWN contours depicting the full extent of the impact ranges for the various piling locations modelled in each of the scenarios), has not been provided. This is significant because the exclusion zones have been derived according to where these contours show an overlap with the Kingmere MCZ only and so the Applicant's revised zoning exercise <u>does not show the full extent of the noise disturbance</u> caused by their proposed piling activities during the sensitive black sea bream spawning and nesting season (which would be indicated by the UWN contours). This represents a serious limitation of Figures H-1 – H-4 as they do not show how much of the surrounding area will also be affected by UWN associated with each scenario.</p>	<p>Please refer to the Applicant's response in reference 2.12.62 above.</p> <p>The Applicant directs the Marine Management Organisation (MMO) to Figures 5.16 and 5.17 in the revised In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), which show the unmitigated underwater noise contours, as defined using the 135 dB threshold (the use of which the Applicant does not support), relative to the Kingmere Marine Conservation Zone (MCZ).</p> <p>The Applicant also reiterates, that no unmitigated piling will be undertaken during the piling campaign, with multiple mitigation measures also proposed during the nesting season of black seabream. These include the implementation of a seasonal piling restriction in the western portion of the array from March to June, and multiple measures during the month of July, including the combination of double big bubble curtains (DBBC) and another noise mitigation measure, and a sequencing approach to piling starting in locations furthest from the Kingmere MCZ.</p>

Ref	Deadline 4 submission	Applicant's response
2.12.65	<p>4.3.5 The MMO has consistently highlighted throughout previous advice that UWN from piling activities has the potential to not only disturb black sea bream whilst nesting, but also disrupt the migration of black sea bream potentially preventing them from reaching their spawning and nesting sites, as well as potentially causing physical/physiological responses in fish close to the sound source (such as temporary threshold shift (TTS) or injury) which may in turn affect their reproductive success. It should also be noted that there are black sea bream nesting sites present within the Rampion 2 export cable corridor (as recognised by the Applicant in the ES), and in the surrounding area outside of the Kingmere MCZ, which would be as affected by piling noise as black sea bream located within the MCZ. Regardless of the threshold that the modelling is based on, the Applicant's zoning plan offers little to no protection to black seabream nesting in the areas outside of the Kingmere MCZ or those nesting within the projects export cable corridor during the spawning and nesting season</p>	<p>Black seabream are anticipated to migrate in the spring to spawning areas, from the offshore western channel where they overwinter (Heessen, (2015) as cited in UK Offshore Energy Strategic Environmental Assessment 4 (2022)). As detailed in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), from March through to June, there will be no piling in the western part of the array area, therefore piling activities are located away from the direction of inward travel during the black bream migratory period.</p> <p>As illustrated in Figure 5.1 of the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), areas of potential black seabream nests are located outside of the Kingmere MCZ and in the mid portion of the Rampion 2 ECC. There is also no evidence of suitable nesting substrates in the inshore portion of the ECC, which is largely dominated in coarse sediment types (Figure 9.3 of Chapter 9: Benthic, subtidal and intertidal ecology – Figures, Volume 3 of the Environmental Statement (ES) [APP-082]). Furthermore, any physical/physiological responses (from temporary threshold shift (TTS)) will only occur up to 44 km from the piling activities, outside any potential nesting areas in the ECC and the Kingmere MCZ. With the proposed mitigation measures implemented from March to July (inclusive of the use of NAS, piling zoning and sequencing, as detailed in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5)), the TTS impact ranges will be further reduced.</p> <p>Lastly, as detailed in paragraph 8.6.76 of Chapter 8: Fish and shellfish ecology, Volume 2 of the ES [APP-049] (updated at Deadline 5), black seabream do not form a species of conservation importance in UK waters (they are not protected under the Wildlife and Countryside Act 1981 (amended 1985), nor are they listed under the Natural Environment and Rural Communities Act (2006). Black seabream is however a qualifying species of the Kingmere MCZ, and therefore proposed mitigation measures are designed to mitigate against impacts within this designated site, to ensure the Conservation Objectives of the Kingmere MCZ are not hindered.</p>
2.12.66	<p>4.3.6 The MMO are thankful to see the Applicant present some modelling to demonstrate the feasibility of their zoning plan when modelled using a threshold appropriate for the purpose of modelling behavioural responses in fish sensitive to disturbance. It should be noted however that the MMO have never supported the Applicant's zoning approach based on modelling of the 141 dB threshold as an acceptable form mitigation for UWN impacts to black sea bream during their spawning and nesting season. It has been requested of the Applicant, numerous times that they should present UWN modelling for their worst-case piling scenarios, based on the recommended modelled threshold of 135 dB (as per Hawkins et al., 2014) in order to appropriately and conservatively determine the likely range of impact from UWN to black sea bream.</p>	<p>The Applicant directs the Marine Management Organisation (MMO) to the Applicant's response to reference 2.12.62 above.</p>
2.12.67	<p>4.3.7 Any potential acceptance of the Applicant's zoning plan mitigation would require them to demonstrate that the proposed approach to zoning would be achievable when modelled based on an appropriate behavioural threshold of the 135 dB SELs. The modelling in Appendix H represents the first instance where the Applicant has presented analyses of their zoning plan based on 135 dB threshold.</p>	<p>This is noted by the Applicant, the Applicant acknowledges the Marine Management Organisation's (MMO's) position regarding the disturbance thresholds and reiterates that the Applicant does not support the use of the 135dB threshold to inform the piling zoning mitigation measures, for the reasons detailed in reference 2.12.62 above.</p>

Ref	Deadline 4 submission	Applicant's response
2.12.68	<p>4.3.8 As previously stated by the MMO it was not acceptable for the month of July to be treated separately from March-June within the Applicant's proposed zoning plan for piling during the spawning and nesting season. Black sea bream are at their most sensitive when undertaking spawning and nest guarding, and as a result, the conservation objectives of the Kingmere MCZ are of heightened importance during the spawning and nesting period. There is clear evidence that black sea bream continue to spawn and maintain their nests into and during July, and therefore July must be considered as an equally important part of the spawning and nesting period, and <u>not</u> less important than the March-June period.</p>	<p>The Applicant has proposed various mitigation measures during the black bream nesting season from March through to July. These measures include the use of noise abatement systems, piling sequencing and the definition of piling exclusion zones (as detailed in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5)).</p> <p>The Applicant maintains their position that a full piling restriction from 1 March to 31 July is disproportionate to the risk of an impact arising that could result in significant population level effects on nesting black bream. This is, in part, due to the substantially reduced spawning/nesting activity apparent during the month of July, when compared to March-June in the same year (as evidenced in the 2020 aggregates survey). It is also considered that spawning activity in July represents repeat spawning events (Doggett, 2018²). Furthermore, as also stated in the Applicant's response to ref E89 in 8.24 Applicant's Responses to Relevant Representations [REP1-017], piling was undertaken through the month of July during the construction of Rampion 1 and although anecdotal, the post-construction monitoring for that Proposed Development did not identify any adverse population effects on black seabream in the region. Taking this evidence into consideration, a lesser impact on the population breeding success in July is anticipated (as set out in Chapter 8: Fish and shellfish ecology, Volume 2 of the ES [APP-049] (updated at Deadline 5)).</p> <p>Acknowledging that some nesting may still potentially occur in July in some years, the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), the provision of which is secured in Condition 11(1)(k) of the deemed Marine Licences (dMLs) (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5), sets out multiple mitigation measures during piling, should this be undertaken in the month of July. These include the combination of DBBC with an additional noise mitigation measure, and a sequencing approach to piling starting in locations furthest from the Marine Conservation Zone (MCZ).</p> <p>As set out in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), and secured in Condition 11(1)(k) of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5)), from March to June piling will only be undertaken in the eastern part of the offshore Array area, and subject to mitigation using the combination of DBBC and another noise abatement measure.</p> <p>Through the application of a variety of mitigation measures, which will be secured through implementation of an approved Sensitive Features Mitigation Plan, the Applicant is confident that piling operations will not hinder the Kingmere Marine Conservation Zone's conservation objectives.</p>
2.12.69	<p>4.3.9 This was advised following the review of a technical note on piling noise relevant to black sea bream and an expert topic group (ETG) meeting on the same subject. During this</p>	<p>The Applicant directs the Marine Management Organisation (MMO) to their response to reference 2.12.68 above.</p>

² Doggett, M. (2018) The Black Bream Project. [online] Available at: <http://www.mattdoggett.com/the-black-bream-project/> [Accessed 18 June 2024].

Ref	Deadline 4 submission	Applicant's response
	<p>ETG, the Applicant stated that they would not have sufficient reactivity during construction to undertake monitoring to determine the presence or absence of black seabream nests during July, meaning they would not be able to determine whether the nests were abandoned or not and so could not confidently confirm that piling in July would have no significant effect on black seabream which may be present and nesting and which would contravene the conservation objectives of the Kingmere MCZ. Despite this, the Applicant chose to pursue a zoning plan which treats July as a less important period in the black sea bream spawning season, again, directly in contravention of the advice provided by subject specialists up to that point.</p>	
2.12.70	<p>4.3.10 The piling exclusion modelling presented in Appendix H now demonstrates that, when an appropriate behavioural response threshold is modelled, the Applicant cannot realistically implement their proposed zoning approach to allow piling to be carried out during the black sea bream spawning season. As was outlined the MMO still have significant concerns with the Applicant's conclusions regarding the significance of noise effects on black sea bream. These include concerns relating to the ongoing disagreement on a suitable behavioural noise threshold for black sea bream, concerns and clarifications required regarding the UWN modelling presented in previously supplied documents and concerns about the suitability of the Applicant's in-situ UWN monitoring at Kingmere MCZ to inform ambient noise levels at the site. Many of these concerns have still not been adequately addressed or resolved.</p>	<p>The Applicant directs the Marine Management Organisation (MMO) to their response to reference 2.12.62 and to response FS2.3 in the Fish and Shellfish section of Applicant's Responses to Examining Authority's Second Written Questions (ExQ2) (Document reference: 8.8.1) above.</p> <p>The Applicant reiterates that the proposed piling restrictions for sensitive features (including black seabream) as defined using a threshold of 135dB SELss for behavioural responses (based on the findings of Hawkins et al., 2014) were set out on request of the Examining Authority, to identify the potential implications of using the 135dB threshold, on the piling zoning plans. The Applicant confirms that, as demonstrated in Applicant's Response to ExA's First Written Questions - Fish and Shellfish - Appendix H (Document Reference: 8.54.1), the piling zoning plan as defined using the 135 dB SELss behavioural threshold is still achievable, although is anticipated to have programme implications. The Applicant also reiterates that (as detailed in Applicant's Response to ExA's First Written Questions - Fish and Shellfish - Appendix H (Document Reference: 8.54.1), and In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5)) a piling zoning plan, as defined using the 135 dB SELss, is disproportionate to the risk posed by piling at Rampion 2. Lastly the Applicant reasserts that a 141 dB SELss behavioural threshold (for a species with similar hearing sensitivity as black seabream), as defined by Kastelein <i>et al.</i> (2017) is appropriate as the stricter suggested 135 dB SELss threshold represents only a brief startle response (sudden short-lived changes in swimming speed) in a species known to be particularly sensitive (and belonging to a more sensitive hearing category than black seabream), sprat, and should not be considered suitable to represent the major behavioural changes that would constitute a failure to meet conservation objectives. As informed by Popper et al., (2014), behavioural disturbances are considered to be long term changes in behaviour and distribution, and should not include effects on single animals, or small changes in behaviour such as startle responses or minor movements.</p>
2.12.71	<p>4.3.11 The Applicant's revised zoning approach now shows that piling will not be possible in much of the Rampion 2 array during the black sea bream spawning season (a proposal which has not been supported at any point) without potentially significant effects on the black sea bream. Given this the MMO must maintain our recommendation that a seasonal piling restriction remains the only viable way to ensure there is no unacceptable disturbance to adult spawning and nesting black seabream during their spawning and nesting period (1st March to 31st July, inclusive).</p>	<p>The Applicant directs the Marine Management Organisation (MMO) to their response in an updated version of Applicant's Response to ExA's First Written Questions - Fish and Shellfish - Appendix H (Document Reference: 8.54.1) submitted at Deadline 5.</p> <p>The Applicant maintains its position that a full piling restriction from 01 March to 31 July is disproportionate to the risk of an impact arising that could result in significant population level effects on nesting black bream. Given the proposed</p>

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2.12.72	<p>4.3.12 The MMO would highlight to the ExA that the ongoing disagreement on a suitable behavioural noise threshold for black seabream remains at the core of this element of Rampion 2 discussions. The presence of breeding and nesting black sea bream within, and around, the Kingmere MCZ as well as within the project's export cable corridor, presents a situation which is very specific to these circumstances. It has become clear, based on our own understanding and through discussions with the Applicant, that there is currently no existing "perfect" academic study which neatly outlines the exact noise threshold at which black sea bream engaged in spawning and nest guarding will exhibit a behavioural response to impulsive underwater noise. In this way, there is no best possible evidence, and therefore a precautionary approach which applies the best available evidence should be adopted, as per the universal standard of Environmental Impact Assessment. This will invariably result in the need to examine evidence derived from a proxy species, ensuring that limitations of the studies being used are appropriately considered, to determine which is most applicable to the situation at hand. Hawkins <i>et al.</i>, (2014) or Kastelein <i>et al.</i> (2017) are candidates to be considered best available evidence in this situation, however there are significantly fewer limitations with the 135 dB threshold as proposed by Hawkins <i>et al.</i>, (2014), than there are for the 141 dB as proposed by Kastelein <i>et al.</i> (2017). A discussion of why the 135 dB threshold as per Hawkins <i>et al.</i>, (2014) represents more appropriate evidence to inform UWN assessments with respect to black seabream, than the 141 dB threshold as per Kastelein <i>et al.</i> (2017) is presented later in this section.</p>	<p>application of a variety of mitigation measures from March through to July, which will be secured through implementation of an approved Sensitive Features Mitigation Plan, the Applicant is confident that piling operations in accordance with the zoning plan are appropriate, achievable and impacts from underwater noise, mitigated as set out, will not hinder the Kingmere MCZ's conservation objectives.</p> <p>The Applicant is in agreement with the Marine Management Organisation (MMO), that there is no academic study which outlines the exact noise threshold at which black sea bream engaged in spawning and nest guarding will exhibit a behavioural response to impulsive underwater noise. The Applicant acknowledges the MMO's position regarding the definition of a disturbance threshold for black seabream. The Applicant however is confident that a 141 dB SELss behavioural threshold, as defined by Kastelein <i>et al.</i> (2017) is suitably precautionary for the assessment of underwater noise impacts on black seabream, and to inform mitigation and consequently proposed monitoring.</p> <p>The Applicant has undertaken a thorough review of available literature and data, and, in the absence of species-specific information for black seabream, the literature review was continued to identify a suitable proxy species to further evidence the likely responses of black seabream to noise emissions. The Applicant does acknowledge that there are limitations in the studies suggested by both the MMO and the Applicant, but that the best available evidence has been utilised to identify an appropriate and precautionary disturbance threshold for black seabream.</p> <p>Seabass were identified as a suitable proxy species due to being morphologically similar to black seabream and in the same hearing category (as defined by Popper <i>et al.</i>, 2014) and at an equivalent life stage to the nesting black seabream. Red seabream were also identified as being a suitable proxy species, due to being in the same family as black seabream (Sparidae), and being in the same hearing category, (categories as defined by Popper <i>et al.</i> (2014)).</p> <p>A study by Hawkins <i>et al.</i> (2014) recorded initial responses of sprat at 135 dB SELss. The Applicant does not support the use of this species as proxy, as sprat have a greater hearing capability and higher sensitivity (Group 4 receptor (Popper <i>et al.</i>, 2014)) to underwater noise than black seabream (Group 3 receptor) and are therefore expected to have a much-increased reaction to any noise stimulus. In addition, the threshold (135 dB SELss) is based on a startle response of sprat which are not involved in any particular activity (i.e. not spawning) and located in a quiet loch. It is therefore not considered appropriate to use this threshold within a much noisier area such as the English Channel (which is subject to high levels of anthropogenic activity and consequently noise) as the fish within this area would reasonably be expected to be accustomed to higher levels of noise and would thus have a correspondingly lower sensitivity to disturbance.</p> <p>Kastelein <i>et al.</i> (2017) reported a 50% initial startle response (sudden short-lived changes in swimming speed) which occurred at an SELss of 131 dB re 1 mPa² s for 31 cm seabass and 141 dB re 1 mPa² s for 44 cm seabass. Of these thresholds, the Applicant is confident that a threshold of 141 dB re 1 mPa² is more appropriate. As</p>

Ref	Deadline 4 submission	Applicant's response
		<p>reported by Kastelein <i>et al.</i> (2017), the thresholds are based on startle responses of seabass, which could be a brief change in swimming speed, direction, or body posture, in at least one of a group of four fish, with a very limited time duration, as opposed to a full abandonment of the ensonified area. Furthermore, there was no evidence of any consistent sustained response to sound exposure by the study animals (changes in school cohesion, swimming depth, and speed) at levels up to 166 dB SELss. As informed by Popper <i>et al.</i>, (2014), behavioural disturbances are considered to be long term changes in behaviour and distribution, and should not include effects on single animals, or small changes in behaviour such as startle responses or minor movements.</p> <p>The Applicant therefore asserts that the use of the disturbance threshold of 141 dB SELss (based on 44 cm seabass, as reported in Kastelein <i>et al.</i> (2017)) is suitably precautionary for an impact assessment on nesting black seabream. This is as the observed effects from underwater noise from pile driving on seabass were so minor (no sustained responses observed), there are unlikely to be any adverse effects on their ecology (such as sustained disturbance to nesting behaviours). Therefore, this noise level is not considered to have any potential to trigger a significant effect on the black bream population within the MCZ and nor is it even likely to have an individual effect on breeding success.</p> <p>As the Applicant has proposed, the 141dB SELss limit, as based on seabass as a proxy, would be the maximum at the boundary of the Kingmere Marine Conservation Zone (MCZ), and only at the maximum blow energy, no feature of the MCZ would even be expected to be exposed to this level of impact and therefore it remains conservative and sufficient to ensure no significant effects to the black bream feature of the MCZ.</p>
2.12.73	<p>4.3.13 In their response to the ExA (FS 1.4), the Applicant asserts that “<i>As informed by Popper et al., (2014), behavioural disturbances are considered to be long term changes in behaviour and distribution, and should not include effects on single animals, or small changes in behaviour such as startle responses or minor movements</i>”. This does not fully acknowledge the context and nuance of the situation at hand, in that noise disturbance during the spawning and nesting season has considerable potential to affect the reproductive success of the black sea bream population within the Kingmere MCZ. This would be a direct impingement on the second conservation objective of the Kingmere MCZ (as worded in The Kingmere Marine Conservation Zone Designation Order, 2013) which is that: the population (whether temporary or otherwise) of black sea bream occurring in the MCZ be free of disturbances likely to significantly affect the survival of its members or their ability to aggregate, nest, or lay, fertilise or guard eggs during breeding.</p>	<p>The Applicant maintains their position that a startle response of a fish receptor (as reported in both Kastelein <i>et al.</i> (2017) and Hawkins <i>et al.</i> (2014)), which could be a brief change in swimming speed, direction, or body posture, in at least one of a group of four fish, with a very limited time duration does not equate to the full abandonment of the ensonified area and the disturbance of spawning and nesting behaviours. Therefore, the Applicant is confident, that there will be no direct impingement on the second conservation objective of the Kingmere Marine Conservation Zone (MCZ) (as worded in The Kingmere Marine Conservation Zone Designation Order, 2013) which is that: the population (whether temporary or otherwise) of black sea bream occurring in the MCZ be free of disturbances likely to significantly affect the survival of its members or their ability to aggregate, nest, or lay, fertilise or guard eggs during breeding.</p>
2.12.74	<p>4.3.14 In this context, the Applicant's interpretation of Popper et al., (2014)'s definition of behavioural disturbances does not appropriately consider black sea bream as a receptor, particularly with respect to its associated conservation status. The Applicant also states that “<i>Whilst the breeding habit differs between seabass and black seabream, the sensitivity of the fish to noise stimuli is physiologically derived, and therefore this proxy species as suggested by the Applicant is considered appropriate for the purposes of defining black bream noise response</i>”. The MMO have acknowledged that seabass may be anatomically similar to black</p>	<p>Applicant acknowledges the Marine Management Organisation's (MMO's) position regarding the definition of a disturbance threshold for black seabream. The Applicant however is confident that a 141 dB SELss behavioural threshold, as defined by Kastelein <i>et al.</i> (2017) is suitably precautionary for the assessment of underwater noise impacts on black seabream, and to inform mitigation and consequently proposed monitoring.</p>

Ref	Deadline 4 submission	Applicant's response
	<p>sea bream, however the fact remains that this species exhibits no demersal spawning or nest guarding behaviours in their ecology. This remains a significant limitation of using seabass to inform noise assessments for black seabream as we cannot be confident that the instinct of black seabream, to continue to spawn and guard their nests in the presence of significant noise disturbance will override their instinct to flee the disturbance. Therefore, the physiology and ecology of the fish cannot be treated separately. This conclusion also omits to acknowledge many of the concerns the MMO have around the 141 dB threshold as per Kastelein et al. (2017) which have been raised with the Applicant. The limitations of Kastelein et al., particularly those relating to the experimental set up, create uncertainty as to how representative and applicable the study is to 'real-world' conditions. When coupled with the finding by Kastelein et al., that smaller seabass (of a more comparable size to reproductively mature black sea bream) showed initial responses to the noise stimulus at a lower threshold (131 dB SELss) than larger fish, confidence in the utility of the 141 dB threshold is seriously undermined.</p>	<p>The Applicant maintains that, as evidenced by the sensitivity criteria defined by Popper <i>et al.</i> (2014), the sensitivity of the fish to noise stimuli is physiologically derived, and therefore seabass (which have the same physiology and hearing capability, which comprise the critical attributes) is considered a suitable proxy to black seabream.</p> <p>Whilst the breeding habit differs between seabass and black seabream, the Applicant suggests that the broadcast spawning behaviour of a seabass could imply that this species would be more likely to respond to an external stimulus (i.e. avoidance) due to the lack of substrate dependency and the ability to therefore move location without the same potential penalties to breeding success. The biological drivers for a seabream to stay guarding its nest is likely to decrease the response to any external stimulus (e.g. Skaret <i>et al.</i>, 2005), thereby further supporting the use of the 141 dB threshold as conservative for this species.</p> <p>The Applicant notes the concern regarding the use of captive vs wild individuals, however, due to the recognised anatomical similarities of sea bass to seabream, maintain that this data is the most robust for the species of concern, as opposed to the reliance on the Hawkins <i>et al</i> (2014) study which used sprat; a species which is known to be much more sensitive to underwater noise and would therefore be expected to have a much increased reaction to any noise stimulus.</p> <p>As noted in Kastelein <i>et al.</i> (2017), the response recorded at 141 dB (or 131 dB for the smaller fish) is a startle response, which could be a brief change in swimming speed, direction, or body posture, in at least one of a group of four fish, with a very limited time duration, as opposed to a full abandonment of the ensonified area. As noted, this noise level is not considered to have any potential to trigger a significant effect on the black bream population within the Marine Conservation Zone (MCZ) and nor is it even likely to have an individual effect on breeding success. Whilst as noted by the Marine Management Organisation (MMO), the abandonment of the nests could lead to "a build-up of sediments, algae etc and smothering of eggs in their developmental stage, as well as predation of eggs by other fish and invertebrates", this would not be reasonably expected to occur within the two-minute startle response recorded by Kastelein <i>et al</i> (2017) and would require the full abandonment of the nest for that breeding season. As the Applicant has proposed, the 141 dB SELss limit would be the maximum at the boundary of the Kingmere MCZ, and only at the maximum blow energy, no feature of the MCZ would even be expected to be exposed to this level of impact and therefore it remains conservative and sufficient to ensure no significant effects to the black bream feature of the MCZ.</p> <p>Further, the Applicant maintains that a threshold of 141 dB re 1 mPa² s based on startle responses of 44cm seabass (Kastelein et al., 2017) is suitably precautionary for the assessment of impacts from underwater noise on black seabream. The use of a threshold based on startle responses of 44cm fish is considered appropriate based on the findings of Perodou and Nedelec (1980), who reported that all black bream individuals caught in the English Channel under 30cm were female, with males measuring >40cm (black seabream are protogynous hermaphrodites, changing from</p>

Ref	Deadline 4 submission	Applicant's response
2.12.75	<p>4.3.15 In comparison, the Hawkins et al., (2014) study examined responses to noise stimuli in a natural environment by wild clupeid fish, which have a high hearing sensitivity. Basing the UWN assessments for Rampion 2 on the real-world field observations by Hawkins et al., (2014) on schools of hearing-sensitive fish represents a suitably precautionary approach by ensuring that the noise levels received by black seabream within the Kingmere MCZ will be below detectable levels (i.e., if the sound levels are based on what is detectable by a fish with a higher hearing sensitivity, we can be confident that any noise emissions which reach the Kingmere MCZ will be below levels detectable by black seabream). As such, this represents a suitably precautionary approach, ensuring that sufficient provision is maintained throughout the assessment and increasing confidence that black seabream will not experience disturbance during their most sensitive spawning season. This is why using the 135dB threshold for the purpose of modelling behavioural responses in black seabream, taken from Hawkins et al. (2014), is considered to be the best available scientific evidence.</p>	<p>female to male when they reach between 30 and 40cm in length (Pawson, 1995)). This is also supported by Russell et al. (2014) and Millet and Loates (1997) (as cited in Vause and Clark., 2011) who report maximum lengths of 60cm. Therefore, 141 dB re 1 mPa² s is considered and appropriate behavioural response threshold, to define the potential for impacts on male black bream, exhibiting nest guarding behaviours.</p> <p>The Applicant maintains that a 141 dB SELss behavioural threshold, as defined by Kastelein <i>et al.</i> (2017) is appropriate as the stricter suggested 135 dB SELss threshold represents only a brief startle response (sudden short-lived changes in swimming speed) in a species known to be particularly sensitive, sprat, and should not be considered suitable to represent the major behavioural changes that would constitute a failure to meet conservation objectives. As informed by Popper <i>et al.</i>, (2014), behavioural disturbances are considered to be long term changes in behaviour and distribution, and should not include effects on single animals, or small changes in behaviour such as startle responses or minor movements. Taking this into consideration, the behavioural impact threshold as defined by Kastelein <i>et al.</i> (2017) is slightly higher but still considered precautionary, and therefore a suitable threshold to apply to underwater noise sensitive receptors such as black seabream. It should be reiterated that, as stated in Chapter 8: Fish and shellfish ecology, Volume 2 of the Environmental Statement [APP-049] (updated at Deadline 5), the Applicant does not support the application of the recommended 135 dB SEL contour to establish behavioural impact ranges for sensitive receptors.</p> <p>Specifically, this threshold is based on a study undertaken within a quiet loch on fish not involved in any particular activity (i.e. not spawning), and it is therefore not considered appropriate to use this threshold within a much noisier area such as the English Channel (which is subject to high levels of anthropogenic activity and consequently noise) as the fish within this area would reasonably be expected to be accustomed to higher levels of noise and would thus have a correspondingly lower sensitivity to disturbance by noise.</p> <p>Notwithstanding this, the Applicant has set out the proposed piling restrictions for sensitive features (including black seabream) as defined using a threshold of 135 dB SELss for behavioural responses (based on the findings of Hawkins <i>et al.</i>, 2014). These are presented in an updated version of Applicants Response to ExAs First Written Questions - Fish and Shellfish - Appendix H (Document Reference 8.54.1), submitted at Deadline 5. In addition, the Applicant has also presented the 135 dB threshold (as based on a study by Hawkins <i>et al.</i> (2014) for the simultaneous piling scenarios (for multileg and monopile foundations) relative to the Kingmere MCZ, in Figures 5.16 and 5.17 of the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5).</p>
<p><u>4.4 Information as to why the 141 dB re 1 mPa² s response threshold observed in seabass in the Kastelein et al. (2017) study is not supported by the MMO</u></p>		
2.12.76	<p>4.4.1 One of the core issues relating to black seabream that is yet to be resolved is the ongoing lack of agreement on a suitable behavioural response threshold for black seabream. The Applicant proposed the use of a threshold of 141 dB SELss, based on a study by Kastelein et al. (2017) which observed an initial startle response in captive-bred adult</p>	<p>A thorough review of available literature and data was undertaken by the Applicant, and having identified no species-specific information for black seabream, the literature review was continued to identify a suitable proxy species to further evidence the likely responses of black seabream to noise emissions.</p>

Ref	Deadline 4 submission	Applicant's response
	<p>European seabass that were exposed to piling playback under controlled laboratory conditions (in a pool exposed for 20 min). The study observed a 50% initial response threshold occurred at an SELss of 141 dB re 1 mPa2 s for 44cm seabass. Smaller seabass (mean 31cm) responded to a lower SELss than the larger fish, with a 50% initial response threshold occurring at 131 dB re 1 mPa2 s. We have outlined many times throughout the consultation process why we do not support the use of a 141 dB SELss threshold for black seabream but will restate our position here for completeness.</p>	<p>Seabass were identified as a suitable proxy species due to being morphologically similar to black seabream, at an equivalent life stage to the nesting black seabream. Red seabream were also identified as being a suitable proxy species, due to being in the same family as black seabream (Sparidae), and being in the same hearing category, (categories as defined by Popper <i>et al.</i> (2014)).</p> <p>Kastelein <i>et al.</i> (2017) reported a 50% initial startle response (sudden short-lived changes in swimming speed) which occurred at an SELss of 131 dB re 1 mPa2 s for 31 cm seabass and 141 dB re 1 mPa2 s for 44 cm seabass. Of these thresholds, the Applicant is confident that a threshold of 141 dB re 1 mPa2 is more appropriate. As reported by Kastelein <i>et al.</i> (2017), the thresholds are based on startle responses of seabass, which could be a brief change in swimming speed, direction, or body posture, in at least one of a group of four fish, with a very limited time duration, as opposed to a full abandonment of the ensonified area. Furthermore, there was no evidence of any consistent sustained response to sound exposure by the study animals (changes in school cohesion, swimming depth, and speed) at levels up to 166 dB SELss. As informed by Popper <i>et al.</i>, (2014), behavioural disturbances are considered to be long term changes in behaviour and distribution, and should not include effects on single animals, or small changes in behaviour such as startle responses or minor movements.</p> <p>The Applicant therefore suggests the use of the disturbance threshold of 141 dB SELss (based on 44 cm seabass, as reported in Kastelien <i>et al.</i> (2017)) as suitably precautionary for an impact assessment on nesting black seabream. This is as the observed effects from underwater noise from pile driving on seabass were so minor (no sustained responses observed), there are unlikely to be any adverse effects on their ecology (such as sustained disturbance to nesting behaviours). Therefore, this noise level is not considered to have any potential to trigger a significant effect on the black bream population within the Marine Conservation Zone (MCZ) and nor is it even likely to have an individual effect on breeding success. As the Applicant has proposed, the 141 dB SELss limit, as based on seabass as a proxy, would be the maximum at the boundary of the Kingmere MCZ, and only at the maximum blow energy, no feature of the MCZ would even be expected to be exposed to this level of impact and therefore it remains conservative and sufficient to ensure no significant effects to the black bream feature of the MCZ.</p>
2.12.77	<p>i. The first concern is that whilst European seabass may be anatomically similar to black seabream, the fish used in the study were captive bred specimens and the experiments were conducted in tanks. In fact, Popper <i>et al.</i>, (2014) highlight this clearly, stating that “animals in tanks or even in large enclosures show very different responses to behavioural stimuli than do wild animals (e.g., Oldfield, 2011). Studies on captive animals are suitable for gaining physiological information such as hearing sensitivity, but not for understanding how a wild animal will respond behaviourally to a stimulus”. We must therefore consider whether wild black sea bream might respond differently to captive bred seabass.</p>	<p>The Applicant agrees with the MMO that wild black seabream could respond differently to captive bred seabass. For example, nesting black seabream are anticipated to exhibit biological drivers such as motivation to stay guarding their nests, and therefore are likely to have a decreased response to an external stimulus such as underwater noise at a minor magnitude (e.g. Skaret <i>et al.</i>, 2005). Furthermore, as opposed to captive bred seabass, wild black seabream are also exposed to a range of anthropogenic noise sources, as evidenced in site specific ambient noise surveys undertaken in 2022 and 2023 (Appendix 8.3 – Underwater noise study for sea bream disturbance [REP2-012] and Appendix 8.4: Black Seabream Underwater Noise Technical Note and Survey Results, Revision A, Volume 4 [PEPD-023])</p>

Ref	Deadline 4 submission	Applicant's response
2.12.78	<p>ii. The next concern is that the European seabass were not engaged in spawning or nesting guarding behaviour. In fact, they are broadcast spawners so are not reliant on particular seabed habitats for reproduction, so there is also a risk regarding how wild black sea bream might respond if they were exposed to increased noise disturbance during their breeding season. Abandonment of nests by male black sea bream will result in nests being untended, causing a build-up of sediments, algae etc and smothering of eggs in their developmental stage, as well as predation of eggs by other fish and invertebrates. Importantly, nest abandonment by black seabream will have implications for the conservation objectives of the Kingmere MCZ.</p>	<p>and are therefore likely to be less sensitive to noise stimuli than captive bred fish which are not exposed to the same level of ambient noise.</p> <p>The Applicant directs the MMO to their response to reference 2.12.74 above.</p>
2.12.79	<p>iii. Further, to the two points raised above, the lough in which the Hawkins et al., (2014) study was carried out represents a much larger body of water than the experimental tanks used by Kastelein et al. (2017). The study by Kastelein et al. (2017) placed Schools of four individual seabass in a net enclosure (4.0 m long, 1.75 m wide and 2 m high in the water) within a larger rectangular tank (7.0 m long, 4.0 m wide; water depth 2.0 m) to be observed. The wild sprat in Hawkins et al., (2014) study were not spatially confined in the same way that Kastelein's seabass were meaning they were likely more able to respond to the noise stimulus in a more authentic and natural way.</p>	<p>The Applicant directs the MMO to their response to reference 2.12.74 above.</p>
2.12.80	<p>iv. The Applicant has continuously neglected to take into consideration that the study by Kastelein et al. (2017), found a 50% initial response threshold occurred at an <u>SELss of 131 dB re 1 mPa2 s for 31 cm fish</u>, and <u>141 dB re 1 mPa2 s for 44 cm fish</u>; thus, the small fish reacted to lower SELss than the large fish. Black seabream attain reproductive maturity at <u>30cm</u>, so noting that the smaller seabass of 31cm showed initial responses at a threshold of <u>SELss of 131 dB re 1 mPa2 s</u>, this (131dB) threshold is arguably more suitable. In addition, adult black seabream grow to a size of 35-40cm, i.e. smaller than the 44cm of the adult European seabass that responded at 141 dB re 1 mPa2 s. In summary, the influence of the size of fish found by Kastelein et al. (2017) cannot be discounted by the Applicant.</p>	<p>The Applicant directs the MMO to their response to reference 2.12.74 above.</p>
2.12.81	<p>v. The Applicant has maintained that there is no evidence to support the use of 135 dB SELss other than that it is lower than 141 dB SELss. However, as previously highlighted, the 135 dB threshold is taken from a peer-reviewed paper (Hawkins et al., 2014) which presents findings from a field study involving piling playback with wild sprat which are more sensitive to UWN than black seabream. For these reasons, the 135 dB can be considered precautionary, but less precautionary than if we were to use the threshold of 131 dB which was found in the study by Kastelein et al. (2017) for seabass that were of the same size as reproductively mature black seabream (the threshold of 131 dB was immediately discounted by the Applicant). Given the limitations of the studies outlined above, but acknowledging that 131 dB is a very low threshold, in line with our previous advice, we maintain that the threshold of 135 dB SELss, as per Hawkins et al., (2014), represents the best available evidence to inform a precautionary approach to modelling. Although still making inferences from a proxy species, the 135 dB threshold was based on a study of wild sprats i.e., clupeids with greater hearing capability and higher sensitivity to UWN than black seabream and seabass, and as a result this threshold is already considered sufficiently conservative for the purposes of modelling UWN. We have also previously highlighted that our recommendation</p>	<p>The Applicant directs the MMO to their response to reference 2.12.74 above.</p>

Ref	Deadline 4 submission	Applicant's response
	<p>for using a threshold of 135 dB represents a workable compromise between 141 dB and 131 dB, in addition to being based on a fish of similar hearing capability and ecology, which has a higher hearing sensitivity.</p>	
2.12.82	<p>vi. The Applicant has argued that as the study by Hawkins et al., (2014) took place in a natural sea lough, Lough Hyne, which the authors describe as 'quiet', and therefore the conditions for the study do not reflect the ambient noise levels that typically occur around Kingmere MCZ to which black seabream will be exposed, and to some extent habituated. In their response to the ExA (FS 1.4), the Applicant states that the location of the Hawkins et al., (2014) study in a quiet natural lough means that the study is not applicable to a much noisier area such as the English Channel. However, the Applicant has not fully acknowledged a key limitation of the Kastelein et al., (2017) study, which is that their experiments on seabass were carried out in an environment which was artificially controlled to be as quiet as possible. The authors of the study state that the conditions the fish were kept in were very quiet, with the tanks and water systems having no pumps, and underwater noise levels were kept below those occurring during Sea State 0 (Knudsen et al., 1948). The research pool was also made as quiet as possible, by using the filter unit with a low noise "whisper" pump and having only one researcher present whilst the experiment was running (remaining "seated quietly in the research cabin. The only actions she performed were starting a session by tapping the keypads of the laptops"). This speaks to the efforts that Kastelein et al., made to ensure that background noise levels were low so as not to influence the results of the trial. This is arguably less representative of the noisy the English Channel the lough in which Hawkins et al., (2014) conducted their study, which provided an environment where some level of natural ambient background noise was likely to be present.</p>	<p>The Applicant agrees with the MMO, that both the 135 dB SELss threshold as derived from a study undertaken in a quiet sea lough (Hawkins <i>et al.</i>, 2014) and the 141 dB SELss disturbance threshold, from a study undertaken in quiet tanks (Kastelein <i>et al.</i>, 2017) are overly precautionary thresholds, as they do not reflect the ambient noise levels that typically occur around Kingmere MCZ to which black seabream will be exposed, and to some extent habituated.</p> <p>It is on this basis, that the Applicant has identified a threshold based on a suitable proxy species (seabass), based on the physiology and hearing capability of the species (which comprise the critical attributes).</p> <p>The Applicant has maintained throughout, that the 141 dB SELss disturbance threshold, is still considered precautionary, but appropriate, as the stricter suggested 135 dB SELss threshold represents only a brief startle response in a species known to be particularly sensitive (and belonging to a more sensitive hearing category than black seabream), sprat.</p>
2.12.83	<p>vii. The recordings of pile driving sounds used in the piling playback by Kastelein et al., (2017) were recorded at 800 m from a 4.2 m diameter pile being driven for the Dutch offshore wind farm 'Egmond aan Zee' in the North Sea. However, for Rampion Extension, the Applicant intends to use monopiles of up to 13.5m (three times larger than that used for Egmond aan Zee), with a maximum hammer energy of 4,400kJ. Whether the piling playback scenario used in the study is suitable for comparison to the scenario for piling at Rampion extension has not been discussed or acknowledged as a further limitation of the study.</p>	<p>The Applicant considers this observation from the Kastelein <i>et al.</i>, (2017) study on seabass, inapplicable and irrelevant to the current discussion points, as this relates purely to generated noise levels, and not the received noise level of the receptor. The Applicant further notes that piling operations will be undertaken over 800 m from the Kingmere MCZ (the closest point of the array area is located approximately 3 km from the MCZ).</p>
5. MMO Comments on Applicant's Submissions received at Deadline 3		
2.12.84	<p>5.1. The MMO has consulted with (Cefas) and reviewed the following revised documents submitted at Deadline 3:</p> <ul style="list-style-type: none"> I. 7.12 Outline Scour Protection and Cable Protection Plan Rev B (REP3-039) II. 7.13 Outline Marine Written Scheme of Investigation Rev B (REP3-041) III. 7.16 Outline Offshore Operations and Maintenance Plan Rev B (REP3-042) IV. 7.17 In Principle Sensitive Features Mitigation Plan Rev C (REP3-046) V. 7.18 In Principle Offshore Monitoring Plan Rev B (REP3-047) VI. 8.54 Applicant's Response to Examining Authority's First Written Questions Rev A (REP3-050) VII. 8.55 Applicant's Response to Deadline 2 Submissions Rev A (REP3-051) VIII. 8.63 Applicant's Responses to Historic England Deadline 1 Submission on Marine Archaeology Rev A (REP3-056) IX. EN010117-001173-Written Questions FINAL 	<p>Noted, the Applicant has no further comments on this matter at this time.</p>

Ref	Deadline 4 submission	Applicant's response
2.12.85	5.2. In addition to the above documents, the MMO has also consulted on the following document submitted at Deadline 2 I. 8.49 Applicant's Response to Prescribed Consultees' Written Representation Rev A (REP2-026)	Noted, the Applicant has no further comments on this matter at this time.
In Principle Sensitive Features Mitigation Plan Rev C (REP3-046)		
5.3 Benthic comments		
2.12.86	5.3.1 The In Principle Sensitive Features Mitigation Plan (IPSFM) refers to two Natural Environment Research Council (NERC) Biodiversity Action plan (BAP) Habitats only (' <i>Sabellaria spinulosa</i> with kelp and red seaweeds on sand-influenced infralittoral rock (A3.215)' and 'Piddocks with a sparse associated fauna in sublittoral very soft chalk or clay (A4.231)) that have been considered for mitigation. However, the Environmental Statement (ES) (Chapter 9: Benthic, subtidal and intertidal ecology) also identified <i>Sabellaria spinulosa</i> on stable circalittoral mixed sediment (A5.611) as a key biotype recorded either from site specific monitoring or habitat modelling.	The Applicant has committed to targeted pre-construction surveys of priority habitats, including all forms of <i>Sabellaria spinulosa</i> reef, as referenced in the Offshore In Principle Monitoring Plan [REP4-055] . Proposals for micro-siting around priority habitats is presented within the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), which includes all forms of <i>Sabellaria spinulosa</i> reef and is secured in Condition 11(1)(k) of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5).
2.12.87	5.3.2 The MMO would like to see this habitat considered for mitigation/micro-siting. The MMO refers the applicant to Paragraphs 4.2.1 & 4.2.2 of our Deadline 3 response (REP3-076) regarding considerations for confirming the presence of these habitats	Please refer to the Applicant's response reference 2.12.86 above.
2.12.88	5.3.3 On page 7 of the IPSFM, additional mitigation measures have been included. Mitigation measure C-283 refers to the use of gravel bags to protect the vessel if needing to ground to lay cables in the near shore as an embedded environmental measure.	The Applicant can confirm that it is the removal of gravel bags that is the embedded environmental measure 'Gravel bags laid on the seabed to protect the cable barge during construction of Rampion 2, will be removed prior to the completion of construction, where practicable'.
2.12.89	5.3.4 It also states that the gravel bags will be removed prior to the completion of construction, where practicable. This measure does not appear to mitigate for any environmental impacts, and if the gravel bags are not recovered, will cause additional impact to the habitats. Please could the Applicant provide more information on this proposed mitigation measure?	The methods for installing and removing gravel bags will be detailed at the construction stage. It is likely that this method will involve barges with lifting equipment, lowering and lifting the bags out of the water. It is likely that filling of the bags will take place at a port location. Risk assessments and method statements will be utilised to minimise the potential to damage any gravel bags when they are installed and on removal.
2.12.90	5.3.5 In addition, mitigation measure C-289 refers to the use of secondary protection material but does not explain further what this is. Please could the Applicant provide more information?	This specifically relates to cable protection as defined in Part 1 (2)(1) of the Draft Development Consent Order [REP4-004] (updated at Deadline 5). Commitment C-289 has been included in the Outline Scour Protection and Cable Protection Plan [REP3-039] (updated at Deadline 5), secured in Condition 11(1)(i) of the deemed Marine Licences (dMLs) (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5)).
5.4 Fisheries comments		
2.12.91	5.4.1 As raised in the MMO's Deadline 3 response (Paragraph 4.2.18 - REP3-076) the MMO continue to question whether monitoring of the first four mono and multileg piled foundations will be adequate to validate the numerous predictions made in the ES in relation to UWN noise, especially given the various piling scenarios proposed that include sequential piling, simultaneous piling, as well as the following noise abatement measures; Double Big Bubble DBBC ~ 9 to 12dB reduction in source level; and PULSE hammer (by IHC IQIP) ~ 6 to 10dB reduction in source level.	The Applicant has submitted an updated Offshore In Principle Monitoring Plan [REP4-055] at Deadline 5, 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:

Ref	Deadline 4 submission	Applicant's response
		<ul style="list-style-type: none"> 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; to validate mitigation zones implemented during piling; and to validate compliance with the specified noise threshold proposed for black seabream at the Kingmere Marine Conservation Zone site, should one be implemented. <p>As detailed in the Offshore In Principle Monitoring Plan [REP4-055] (updated at Deadline 5), the proposed monitoring includes the construction noise monitoring of four from the first twelve (12) piles to validate the assumptions made within the 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.</p> <p>The results of the underwater noise monitoring to establish the efficacy of the mitigation measure(s) will inform the design of the piling exclusion zones to be implemented during the sensitive season for the black seabream feature of the Kingmere Marine Conservation Zone (MCZ). The noise levels recorded will be used to fine-tune the mitigation measures applied and/or refine the exclusion zones such that the noise levels modelled and set out within the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5) will not be exceeded at the MCZ. This enables an adaptive management approach to be adopted to provide for uncertainties in the predicted noise levels reaching the designated black seabream feature and ensure the level of protection afforded through the adoption of the noise mitigation measures is delivered during the construction of the Proposed Development.</p>
2.12.92	5.4.2 The In Principle Sensitive Features Mitigation Plan sets out the applicant's proposed mitigation for reducing the impacts of underwater noise from piling on spawning and nesting black sea bream, and the impacts to sensitive features within the Export Cable Corridor (ECC) area and designated features of Kingmere MCZ, the Beachy Head East and West MCZs and Selsey Bill and the Hounds MCZ.	Noted, the Applicant has no further comments on this matter.
2.12.93	5.4.3 The Applicant is proposing to implement a spatial zoning strategy to enable them to carry out piling during the black sea bream spawning and nesting season, but which offers sufficient protection to spawning and nesting black sea bream. The spatial zoning plan presented is based on noise modelling that uses a 141 dB Sound Exposure Levels (single strike) SELss threshold for behavioural responses in black sea bream. As per the MMOs previous comments (Paragraph 4.6.4 - REP3-076) there is still ongoing disagreement on a suitable behavioural noise threshold for black sea bream.	Noted, the Applicant has no further comments on this matter.
2.12.94	5.4.4 The MMO have consistently stated that we do not support the use of the 141 dB SELss threshold for the purpose of modelling behavioural responses in black sea bream. As no new evidence or data has been presented in this the MMO maintain our position that the noise modelling for behavioural responses in black sea bream should be based on 135 dB SELss (as per Hawkins et al. 2014).	The Applicant maintains that a 141 dB SELss behavioural threshold, as defined by Kastelein <i>et al.</i> (2017) is appropriate as the stricter suggested 135 dB SELss threshold represents only a brief startle response (sudden short-lived changes in swimming speed) in a species known to be particularly sensitive, sprat, and should not be considered suitable to represent the major behavioural changes that would

Ref	Deadline 4 submission	Applicant's response
		<p>constitute a failure to meet conservation objectives. As informed by Popper <i>et al.</i>, (2014), behavioural disturbances are considered to be long term changes in behaviour and distribution, and should not include effects on single animals, or small changes in behaviour such as startle responses or minor movements. Taking this into consideration, the behavioural impact threshold as defined by Kastelein <i>et al.</i> (2017) is slightly higher but still considered precautionary, and therefore a suitable threshold to apply to underwater noise sensitive receptors such as black seabream. It should be reiterated that, as stated in Chapter 8: Fish and shellfish ecology, Volume 2 of the Environmental Statement [APP-049] (updated at Deadline 5)), the Applicant does not support the application of the recommended 135 dB SEL contour to establish behavioural impact ranges for sensitive receptors.</p> <p>Specifically, this threshold is based on a study undertaken within a quiet loch on fish not involved in any particular activity (i.e. not spawning), and it is therefore not considered appropriate to use this threshold within a much noisier area such as the English Channel (which is subject to high levels of anthropogenic activity and consequently noise) as the fish within this area would reasonably be expected to be accustomed to higher levels of noise and would thus have a correspondingly lower sensitivity to disturbance by noise.</p> <p>Notwithstanding this, the Applicant has set out the proposed piling restrictions for sensitive features (including black seabream) as defined using a threshold of 135 dB SELs for behavioural responses (based on the findings of Hawkins <i>et al.</i>, 2014). These were submitted at Deadline 3 and The Applicant has submitted an updated version of, and explanation of the changes made, in Applicants Response to ExAs First Written Questions - Fish and Shellfish - Appendix H (Document Reference: 8.54.1) at Deadline 5. In addition, the Applicant has also presented the 135 dB threshold (as based on a study by Hawkins <i>et al.</i> (2014) for the simultaneous piling scenarios (for multileg and monopile foundations) relative to the Kingmere MCZ, in Figures 5.16 and 5.17 of the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5).</p>
2.12.95	5.4.5 As previously highlighted, this recommendation represents a compromise between 141 dB and 131 dB, which is arguably a more suitable threshold. The acknowledge that 131 dB is a very low threshold given the limitations of the study, and maintain threshold of 135 dB SELs, as per Hawkins et al., (2014), should be used as a precautionary approach.	As noted in Kastelein <i>et al.</i> (2017), the response recorded at 141 dB (or 131 dB for the smaller fish) is a startle response, which could be a brief change in swimming speed, direction, or body posture, in at least one of a group of four fish, with a very limited time duration, as opposed to a full abandonment of the ensonified area. This noise level is not considered to have any potential to trigger a significant effect on the black bream population within the Marine Conservation Zone (MCZ) and nor is it even likely to have an individual effect on breeding success. Whilst as noted by the MMO, the abandonment of the nests could lead to “a build-up of sediments, algae etc and smothering of eggs in their developmental stage, as well as predation of eggs by other fish and invertebrates”, this would not be reasonably expected to occur within the two minute startle response recorded by Kastelein <i>et al</i> (2017) and would require the full abandonment of the nest for that breeding season. As the Applicant has proposed, the 141 dB SELs limit would be the maximum at the boundary of the Kingmere MCZ, and only at the maximum blow energy, no feature of the MCZ would even be expected to be exposed to this level of impact and therefore it remains

Ref	Deadline 4 submission	Applicant's response
2.12.96	<p>5.4.7 The Applicant has outlined a series of mitigation measures to limit impacts to sensitive features within the ECC area and designated features of Kingmere MCZ, the Beachy Head East and West MCZs and Selsey Bill and the Hounds MCZ. These include:</p> <ul style="list-style-type: none"> i. Cable routing design and micro siting of the cable to avoid subtidal chalk and reef features, peat and clay exposures and areas considered to potentially support black sea bream nesting, ii. The implementation of a working separation distance (buffer) will be maintained wherever possible from sensitive features, notably black sea bream nesting areas, iii. Cable routeing design to target areas of seabed that enable maximising the potential for cables to be buried, thus providing for seabed habitat recovery in sediment areas and reducing the need for secondary protection, iv. Adoption of specialist offshore export cable laying, and installation techniques will minimise the direct and indirect (secondary) seabed disturbance footprint, v. A seasonal restriction for Offshore Export Cable Corridor installation activities during the black sea bream breeding period (March-July) to avoid any effects to black sea bream nesting in or near Kingmere MCZ 	<p>conservative and sufficient to ensure no significant effects to the black bream feature of the MCZ.</p> <p>As noted by the Applicant, the 135 dB SELss threshold is not considered relevant and is not supported in the literature for use in impact assessments and notwithstanding the above, nor are the results of the study applicable to a more industrialised part of the sea with much higher background noise levels. The Applicant maintains that a threshold of 141 dB SELss is appropriate for black bream.</p> <p>For the reasons outlined, the Applicant considers that both the 131 dB SELss and 135 dB SELss levels noted by the MMO are unreasonably low and not applicable for the Proposed Development.</p> <p>Notwithstanding this, the Applicant has set out the proposed piling restrictions for sensitive features (including black seabream) as defined using a threshold of 135 dB SELss for behavioural responses (based on the findings of Hawkins <i>et al.</i>, 2014). These were submitted at Deadline 3 and are presented in an updated version of, and explanation of the changes made, in Applicant's Response to ExAs First Written Questions - Fish and Shellfish - Appendix H (Document Reference: 8.54.1) submitted at Deadline 5. In addition, the Applicant has also presented the 135 dB threshold (as based on a study by Hawkins <i>et al.</i> (2014) for the simultaneous piling scenarios (for multileg and monopile foundations) relative to the Kingmere MCZ, in Figures 5.16 and 5.17 of the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5).</p>
2.12.97	<p>5.4.8 The MMO support the above listed proposed mitigation measures. The MMO recommend that the commitment in point v. (seasonal restriction for Offshore Export Cable Corridor) is conditioned in the deemed marine licence (DML) with the dates of the restriction conditioned as the 1st of March – 31st July, inclusive.</p>	<p>Noted, the Applicant has no further comments on this matter.</p> <p>The Applicant welcomes the MMO's support on the mitigation measures listed in response reference 2.12.96. The Applicant confirms that commitment C-273 is detailed in the In Principle Sensitive Features Mitigation Plan [REP4-054] (updated at Deadline 5), which is secured in Condition 11(1)(k) of the dML, Schedules 11 and 12 of the draft DCO [REP4-004] (updated at Deadline 5)).</p>

Ref	Deadline 4 submission	Applicant's response
2.12.98	<p>5.4.9 This condition should be made applicable throughout the licence term of the project, i.e. for all years of construction, operation, and post-construction. It should be made clear that ECC maintenance activities also have the potential to disturb black sea bream nesting areas and so, as standard, no works should be carried out within the ECC during the black sea bream spawning and nesting season without permission being sought from the MMO, in consultation with Cefas Fisheries Advisors and Natural England.</p>	<p>The Applicant welcomes the MMO's support on the mitigation measure listed in response 5.4.7 regarding a seasonal restriction for Offshore ECC works during the black sea bream breeding period (March-July).</p> <p>The Applicant confirms that commitment C-273 has been updated to the following: C-273: "A seasonal restriction will be put in place to ensure Offshore Export Cable Corridor activities (including: construction and installation, preparatory works during cable installation, UXO clearance, preventive or scheduled maintenance, inspections and decommissioning) are undertaken outside the black seabream breeding period (1st March- 31st July inclusive) to avoid any effects from installation works on black seabream nesting within or outside of the Kingmere MCZ. This does not apply to emergency work required to maintain the operation, safety and integrity of the infrastructure."</p> <p>The Applicant confirms that commitment C-273 is detailed in the In Principle Sensitive Features Mitigation Plan [REP4-054] (updated at Deadline 5), which is secured in Condition 11(1)(k) of the deemed Marine Licence (dML), Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5).</p>
2.12.99	<p>5.4.10 The MMO do not agree with the proposal to implement a spatial zoning strategy which would allow the Applicant to carry out piling during the black sea bream spawning and nesting season. We have requested modelling based on a 135 dB SELss threshold in our advice for several previous consultations, but this still has not been presented. Without suitable robust modelling to demonstrate the effectiveness of a spatial zoning strategy for piling, we maintain our recommendation of a complete seasonal piling restriction in order to limit disturbance to adult spawning and nesting black sea bream during their spawning and nesting period (1st March to 31st July, inclusive).</p>	<p>The Applicant has submitted an updated version of, and explanation of the changes made, in Applicants Response to ExAs First Written Questions - Fish and Shellfish - Appendix H (Document Reference: 8.54.1) at Deadline 5, where on request of the Examining Authority, the Applicant has set out the proposed piling restrictions for sensitive features (including black seabream) as defined using a threshold of 135 dB SELss for behavioural responses (based on the findings of Hawkins <i>et al.</i>, 2014). These were submitted at Deadline 3. In addition, the Applicant has also presented the 135 dB threshold (as based on a study by Hawkins <i>et al.</i> (2014) for the simultaneous piling scenarios (for multileg and monopile foundations) relative to the Kingmere MCZ, in Figures 5.16 and 5.17 of the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), although the Applicant maintains their position, that they do not support the use of the 135 dB SELss disturbance threshold (as defined by Hawkins <i>et al.</i> 2014).</p>
<h3>5.5 Underwater Noise comments</h3>		
2.12.100	<p>5.5.1 The MMO acknowledges that the Applicant has not yet committed to a particular noise abatement system and therefore specific design for monitoring mitigation outcomes has not been detailed. As stated in our previous response (REP2-035 – Paragraph 7.1.20) in order to determine the efficacy of noise abatement systems at Rampion 2, evidence will be required in the form of measurements of piling noise with and without noise abatement. As it is understood that the black sea bream spawning (nesting) season is March to July, the MMO recommends that measurements of nonabated piling is obtained outside of this window.</p>	<p>The Applicant confirms that additional work has been undertaken looking into the efficacy of Noise Abatement System (NAS). This work is detailed in Information to support efficacy of noise mitigation / abatement techniques with respect to site conditions at Rampion 2 Offshore Windfarm [REP4-067]. As detailed in Information to support efficacy of noise mitigation / abatement techniques with respect to site conditions at Rampion 2 Offshore Windfarm [REP4-067], in consideration of the site characteristics and noise abatement levels, and taking into consideration the outputs of live monitoring of numerous projects whereby NAS have been applied successfully, it is apparent that up to 20 dB noise reduction can be achieved (within depths of ≤ 40 m, and other environmental parameters), through the use of a combination of measures, comprising the double big bubble curtains (DBBC) as the principal measure, together with an additional noise abatement measure,</p>

Ref	Deadline 4 submission	Applicant's response
		<p>which will be selected based on the most appropriate equipment available at the time of construction.</p> <p>The Applicant confirms that, as detailed in the updated In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), the Applicant has now committed to the use of DBBC throughout the piling campaign. The implementation of this mitigation will further reduce the impact ranges of underwater noise (including behavioural effect ranges) to sensitive features within the vicinity of Rampion 2.</p> <p>Commitment C-265 has been updated accordingly to reflect this proposed mitigation. The updated commitment is as follows: <i>C-265: "Double big bubble curtains will be deployed as the minimum single offshore piling 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:</i> <ul style="list-style-type: none"> • <i>sensitive receptors at relevant Marine Conservation Zone (MCZ) sites and reduce the risk of significant residual effects on the designated features of these sites;</i> • <i>spawning herring; and</i> • <i>marine mammals."</i> <p>No non-abated piling will therefore be undertaken during the piling campaign, as requested by Natural England.</p> <p>However, the Applicant confirms that, as detailed in the Offshore In Principle Monitoring Plan [REP4-055], construction noise monitoring of four from the first twelve (12) piles will be undertaken to validate the assumptions made within the Environmental Statement, and to monitor construction noise during the black seabream breeding season (01 March to 31 July) if foundation installation using percussive hammers is undertaken during these months.</p> </p>
2.12.101	5.5.2 The most recent revision of this plan (Revision C - REP3-046) does not contain any significant updates from the perspective of underwater noise. Detailed comments on the In Principle Sensitive Features Mitigation Plan were provided in Section 5.7 of the MMO Section 56 Response and most recently in our Deadline 3 submission (REP3- 076).	The Applicant confirms that, subsequent to its Deadline 3 submission, a further revised In Principle Sensitive Features Mitigation Plan [REP4-053] was submitted at Deadline 4. This reflects the Applicant's commitment to use double big bubble curtains (DBBC) throughout the piling campaign (Commitment C-265). The mitigated underwater noise impact ranges, with the use of DBBC are also presented within the In Principle Plan. Furthermore, additional work was undertaken looking into the efficacy of NAS, this is detailed in Information to support efficacy of noise mitigation / abatement techniques with respect to site conditions at Rampion 2 Offshore Windfarm [REP4-067] . The Applicant would highlight that the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5) has also been updated to reflect the findings of this work.
2.12.102	5.5.3 The MMO restates its previous advice that the spawning period for black sea bream is understood to be March–July inclusive and as such July should not be treated any differently	The Applicant directs the MMO to their response to reference 2.12.68 above.

Ref	Deadline 4 submission	Applicant's response
	with regards to any proposed mitigation. The MMO maintains the opinion that a seasonal piling restriction of March 1st to July 31st, inclusive is required to prevent disturbance from UWN to nesting and spawning black sea bream.	
2.12.103	5.5.4 While the MMO acknowledges that the precise mitigation measures to be adopted are subject to the final design and construction methods for Rampion 2, it is important that the applicant commits to using noise abatement technologies which achieve the greatest amount of noise reduction.	<p>The Applicant confirms that the main objective of the proposed mitigation is to achieve the appropriate and sufficient noise reduction levels rather than specify precise equipment at this stage. Nonetheless, the Applicant confirms that, as detailed in the updated In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), the Applicant has now committed to the use of double big bubble curtains (DBBC) throughout the piling campaign. The implementation of this mitigation will further reduce the impact ranges of underwater noise (including behavioural effect ranges) to sensitive features within the vicinity of Rampion 2.</p> <p>Commitment C-265 has been updated accordingly to reflect this proposed mitigation. The updated commitment is as follows:</p> <p><i>C-265: "Double big bubble curtains will be deployed as the minimum single offshore piling 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:</i></p> <ul style="list-style-type: none"> <i> sensitive receptors at relevant Marine Conservation Zone (MCZ) sites and</i> <i>reduce the risk of significant residual effects on the designated features of these sites;</i> <i> spawning herring; and</i> <i> marine mammals."</i>
2.12.104	5.5.5 In the absence of sufficient evidence to support an alternative behavioural noise threshold for fish species the MMO continues to support 135 dB SELss (single strike sound exposure level) behavioural threshold as presented in Hawkins et al. (2014).	The Applicant directs the MMO to the Applicant's response to reference 2.12.72 above.
2.12.105	5.5.6 The MMO does not support the applicant's proposed threshold of 141 dB SELss based on Kastelein et al. (2017) as this study identified startle response at 131 dB SELss for seabass that were of the same size as reproductively mature black sea bream. The MMO is aware that discussions on this topic are ongoing, and a threshold still needs to be agreed between all interested parties (the Applicant, MMO, Cefas and Natural England).	The Applicant directs the MMO to the Applicant's response to reference 2.12.76 above.
Offshore In Principle Monitoring Plan Rev B (REP3-047)		
<u>5.6 Benthic comments</u>		
2.12.106	5.6.1 Changes made to the Offshore In Principal Monitoring Plan (OIPMP) do not address previous Benthic and Coastal Processes comments concerning offshore monitoring raised by the MMO in Paragraphs 4.2.1 - 4.2.8 of the MMO's Deadline 3 response (REP3-076). The MMO is aware however, that these comments were made in relation to the In Principle Sensitive Features Mitigation Plan Revision B (REP1-012) not the specific document in question and that these comments were submitted at the same time as the revised document (Deadline 3) so the applicant would have not had time to amend their submissions.	The Offshore In Principle Monitoring Plan [REP4-055] was updated at Deadline 4 to respond to the MMO's comments in their Deadline 3 submission [REP3-076] .

Ref	Deadline 4 submission	Applicant's response
2.12.107	<p>5.6.2 In any case the MMO would refer the applicant to Paragraphs 4.2.1 - 4.2.8 of the MMO's Deadline 3 response (REP3-076) for further advice on Benthic and Coastal processing monitoring which are relevant to the Offshore In Principle Monitoring Plan.</p> <p>The Applicant has included the following paragraphs from the MMO's submission for convenience:</p> <p>4.2.1 The MMO acknowledges the Applicant's intention to conduct a preconstruction geophysical survey (side scan sonar or multibeam echosounder) to identify the presence of chalk reef, stony reef and Sabellaria spinulosa reef, which is to be followed by a drop-down video survey in the event of these habitats being confirmed.</p> <p>4.2.2 - The MMO recommends that where feasible, both side scan sonar and Multi-beam Echo Sounder methods are used together to collect more information including backscatter. This supports the use of drop-down video to confirm the presence of these features.</p> <p>4.2.3 The MMO notes the Applicant's proposal to conduct a single post construction monitoring survey, only where chalk reef, stony reef and S. spinulosa reef are identified during the pre-construction survey and in the event that no stony reef or S. spinulosa reef are identified preconstruction, no post construction survey will be undertaken.</p> <p>4.2.4 - The MMO disagrees with this proposal and is of the belief that a single post construction survey will not constitute sufficient temporal monitoring for these habitats.</p> <p>4.2.5 - The MMO notes that only one single post-construction survey is proposed, and no timescale is given as to how soon after construction this survey will take place. No other post-installation surveys are proposed with regard to cable installation. The MMO would expect details of monitoring provisions in the event of further potential cable protection measures and after decommissioning, including the subsequent removal of any cable protection.</p> <p>4.2.6 - The MMO would expect additional years of monitoring to be conducted in the event that any affected habitats are identified as not having recovered by the initial post construction monitoring survey. The MMO would also expect this monitoring to be conducted for all potentially affected benthic habitats and not just those mentioned above.</p> <p>4.2.7 The MMO is satisfied that the mitigation measures proposed in this document avoid direct impact of many of the sensitive benthic features identified in the habitat map (Figure 5-1, paragraph 5). The MMO considers this proposed mitigation acceptable.</p> <p>4.2.8 - The MMO agree with the mitigation measures proposed to help mitigate against impacts from physical processes, such as creating buffers from sensitive features and maximising cable burial to reduce need for secondary protection.</p>	<p>The Applicant responded to these paragraphs at Deadline 4 in Applicant's comments on Deadline 3 Submissions Revision A [REP4-067] as set out below:</p> <ul style="list-style-type: none"> 4.2.1 and 4.2.3 – These points were noted by the Applicant with no further comments to make. 4.2.2 – The Applicant confirms that both side scan sonar and Multi-beam Echo Sounder methods will be used together to collect more information, including backscatter, to support the use of drop-down video to confirm the presence of these features. The Offshore In Principle Monitoring Plan [REP3-047] has been updated at Deadline 4. 4.2.4 – As set out in the Offshore In Principle Monitoring Plan [REP3-047] (updated at Deadline 4), the Applicant will design the post-construction monitoring and any subsequent years that might be required following the acquisition of pre-construction monitoring data which will be consulted on with the MMO and its advisors. 4.2.5 and 4.2.6 – The Applicant refers the MMO to the response to reference 4.2.4 above. 4.2.7 and 4.2.8 – The Applicant welcomes the support of the MMO.
2.12.108	<p>5.6.3 In addition to comments made previously by the MMO and Cefas in our last Written Representation (REP3-076 – Paragraphs 4.2.1 - 4.2.8) and specifically in relation to <i>Sabellaria spinulosa</i> reef monitoring and where the habitats are coarse/mixed, the MMO advise the use of drop-down video in combination with acoustic methods in areas of</p>	<p>As set out in the Offshore In Principle Monitoring Plan [REP4-055] (updated at Deadline 5), the delivery of which is secured in Condition 11(1)(j) and Condition 16 which confirms what the pre-construction survey must include, of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004]</p>

Ref	Deadline 4 submission	Applicant's response
	<p>suspected reef due to the acoustic data not always showing clear reef signatures. The MMO are aware that acoustic surveys are undertaken first and reviewed for possible signatures and where no signatures are observed there will be no further survey using drop down video. However, due to the difficulties with distinguishing reef from surrounding sediments in acoustic data in some cases (see Jenkins et al., 2018), we would advise using both methods when monitoring this feature. The MMO note that the only Sabellaria habitat being mitigated for is 'Sabellaria spinulosa with kelp and red seaweeds on sand-influenced infralittoral rock (A3.215)'.</p>	<p>(updated at Deadline 5)) a single pre-construction geophysical (sidescan sonar (SSS) or MultiBeam Echo Sounder (MBES)) survey of those areas within which it is proposed that seabed works will be carried out at a resolution sufficient to identify chalk habitat, stony reef, and potential <i>S. spinulosa</i> reef will be undertaken; and In areas where chalk reef, stony reef, peat and clay exposures and potential <i>S. spinulosa</i> reef is identified from the review of the geophysical data, drop down video and/or stills will be deployed to confirm presence and extent. This will ensure provision of an appropriately contemporary dataset (i.e. less than 24 months old) with which to finalise any required micrositing to avoid sensitive features. The Applicant has considered the potential constraints associated with discerning <i>S. spinulosa</i> reef from SSS/MBES identified in the paper by Jenkins <i>et al.</i>, 2018 and notes that care is needed to ensure that sufficient coverage along with considerations of weather conditions and surrounding seabed character are accounted for in developing the survey plans. These aspects will be included in the Applicant's detailed pre-construction survey proposals, which are required to be submitted to and approved in writing by the MMO as secured in Condition 12(2)(a) of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5).</p> <p>The Applicant has committed to targeted pre-construction surveys of priority habitats, including ALL forms of <i>Sabellaria spinulosa</i> reef, as referenced in the Offshore In Principle Monitoring Plan [REP4-055] (updated at Deadline 5). Proposals for micrositing around priority habitats is presented within the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), which includes all forms of <i>Sabellaria spinulosa</i> reef and is secured in Condition 11(1)(k) of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5).</p>
<h3>5.7 Fisheries</h3>		
<p>2.12.109</p>	<p>5.7.1 Table 4-3 of the OIPMP outlines the In-Principle monitoring proposed for benthic subtidal and intertidal ecology, which includes a pre-construction survey to identify chalk habitat, stony reef, and potential Sabellaria spinulosa reef using a sidescan or multi-beam echo sounder. This will be followed by a drop-down camera or video survey to confirm the presence and extent of the chalk and reef habitats identified. A single post-construction survey using the same methods as the pre-construction survey will be conducted to check on the post-construction condition of these chalk and reef habitats. Given that there are notable areas of chalk and stony reef habitats in the Rampion ECC which provide black sea bream nesting habitat, the MMO support the proposal for pre- and post-construction monitoring.</p>	<p>The Applicant welcomes the MMO's support on the Applicant's proposal for pre- and post-construction monitoring. The Applicant reiterates, that as detailed in the Offshore In Principle Monitoring Plan [REP4-055] (updated at Deadline 5), the requirement for post-construction monitoring will be dependent on the findings of the pre-construction surveys. Where chalk habitat, stony reef, peat and clay exposures and <i>S. spinulosa</i> reef is identified during the baseline survey, a single postconstruction survey, specifically targeting those habitats and reefs identified in the baseline survey, will be undertaken as a check on there condition using the same methodology set out for pre-construction monitoring.</p> <p>Where no stony reef, peat or clay exposures, and/or <i>S. spinulosa</i> reef is identified by the preconstruction survey, no post-construction surveys will be undertaken.</p>
<h3>5.8 Underwater Noise comments</h3>		
<p>2.12.110</p>	<p>5.8.1 The MMO supports the applicant's statement that noise measurements will be made in line with the Good Practice Guide No.133: Underwater Noise Measurement (National Physical Laboratory, 2014).</p>	<p>The Applicant welcomes the MMO's support on noise measurement aligning with the Good Practice Guide No.133.</p>

Ref	Deadline 4 submission	Applicant's response
2.12.111	5.8.2 The MMO advises that it would be important to compare the existing noise propagation modelling presented in the Environmental Statement and any subsequent noise assessment to the measured data generated during the proposed field monitoring.	<p>The Applicant confirms that, as detailed in the Offshore In Principle Monitoring Plan [REP4-055] (updated at Deadline 5), the proposed noise monitoring has the following specific aims:</p> <ul style="list-style-type: none"> to show that the noise level predictions made are appropriate and that the impacts predicted within the Environmental Statement are valid; to validate the mitigation measures in terms of effectiveness; to validate mitigation zones implemented during piling; and to validate compliance with the specified noise threshold proposed for black seabream at the Kingmere Marine Conservation Zone site, should one be implemented.
2.12.112	5.8.3 A direct comparison of how field measured noise spectra for pile driving compare with predictions should be the primary focus of the final presented Offshore In Principle Monitoring Plan.	<p>The Applicant confirms that, as detailed in the Offshore In Principle Monitoring Plan [REP4-055], (updated at Deadline 5) the proposed noise monitoring has the following specific aims:</p> <ul style="list-style-type: none"> to show that the noise level predictions made are appropriate and that the impacts predicted within the Environmental Statement are valid; to validate the mitigation measures in terms of effectiveness; to validate mitigation zones implemented during piling; and to validate compliance with the specified noise threshold proposed for black seabream at the Kingmere Marine Conservation Zone site, should one be implemented.
2.12.113	5.8.4 The MMO acknowledges that a Marine Mammal Mitigation Protocol (MMMP) will be produced in accordance with relevant guidance to minimise the risk of injury or mortality to marine mammals during the construction of Rampion 2. A Final Piling MMMP will be submitted at least six months prior to construction which will be in accordance with the measures in the Draft Piling Marine Mammal Mitigation Protocol (APP-236). The MMO refers the applicant to previous comments made in relation to the suitability of proposed noise mitigation measure for marine mammals provided in Sections and Paragraphs 4.8.1 – 4.8.9 & 4.11.4 – 4.11.8 of our Deadline 3 response (REP3-076).	<p>The Applicant has committed to the use of Double Big Bubble Curtains (DBBC) throughout the piling campaign. The implementation of this mitigation will further reduce the impact ranges of underwater noise on marine mammals.</p> <p>Commitment C-265 has been updated accordingly to reflect this proposed mitigation. The updated commitment is as follows:</p> <p><i>C-265: Double big bubble curtains will be deployed as the minimum single offshore piling 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:</i></p> <ul style="list-style-type: none"> <i>sensitive receptors at relevant Marine Conservation Zone (MCZ) sites and reduce the risk of significant residual effects on the designated features of these sites;</i> <i>spawning herring; and</i> <i>marine mammals.</i>
Outline Offshore Operations and Maintenance Plan Rev B (REP3-042)		
2.12.114	5.8.5 The MMO notes in section 1.2.3 that the applicant now states that “A final Outline Offshore Operations and Maintenance Plan (OOMP) is required to be submitted to MMO, no more than 3 months following the completion of the authorised scheme, in accordance with Condition 3 of the dML, Schedules 11 and 12 of the draft DCO Rev C”.	As requested by the MMO, the Applicant has updated the Condition 3 of the dML, Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] and the Outline Offshore Operations and Maintenance Plan [REP3-044] at Deadline 5 and changed the submission point to be 4 months prior to the completion of construction.
2.12.115	5.8.6 The MMO notes that the previous version of this document stated that the submission of a OOMP to the MMO was a requirement of Condition 11 of Schedule 11 and 12 of the	As requested by the MMO, the Applicant has updated the Condition 3 of the dML, Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] and the

Ref	Deadline 4 submission	Applicant's response
	DCO. However, the MMO acknowledges that the OOMP is now conditioned in 'Maintenance of the authorised scheme' – Condition 3 (1). The MMO refers to our Relevant Representation (RR-219) and Deadline 2 response (REP2-035) and still hopes that the timeline for the OOMP may change to a four or six month review period prior to operation, as opposed to the current timeline of '3 months following the completion of the authorised scheme.	Outline Offshore Operations and Maintenance Plan [REP3-044] at Deadline 5 and changed the submission point to be 4 months prior to the completion of construction.
2.12.116	5.8.7 The MMO notes that there are still outstanding issues pertaining to the wording of Condition 3(2) and 3(5) these are covered in detail in Sections 1 & 2 of this response.	The Applicant directs the MMO to the Applicant's response to references 2.12.49, 2.12.50, 2.12.53, 2.12.114 and 2.12.115 above.
2.12.117	5.8.8 The MMO notes that section 1.2.3 that the word (Construction) has been missed from the statement "completion of the authorised scheme" as written in the OOMP. The correct wording should be "completion of construction of the authorised scheme" as written in Condition 3 of the dML, Schedules 11 and 12 of the draft DCO Rev C. This sentence should be amended so that it matches the wording provided in the DCO and to avoid any confusion.	This has been amended in an updated Outline Offshore Operations and Maintenance Plan [REP3-044] submitted at Deadline 5.
2.12.118	5.8.9 The MMO notes that section 1.2 has been reworded to remove the previous list of examples of what may constitute operation and maintenance activities to instead bring the document in line with the interpretation and definition of "maintain" as defined in the draft DCO Rev C (REP2-003).	The Applicant welcomes the acknowledgement from the MMO.
2.12.119	5.8.10 The MMO thanks the applicant for amending Appendix A to include expanded definitions of new cable protection and additional scour protection as requested in our Deadline 2 response	The Applicant welcomes the agreement from the MMO on the expanded definitions provided.
2.12.120	5.8.11 The MMO notes that comments provided in point 5.6.2 of our Relevant Representation (RR-219) relating to the status of operations and maintenance activities which may require additional licences or consultation have not been addressed.	The Applicant received additional information from the MMO on this point on 04 July 2024 and will be responding in due course.
2.12.121	5.8.12 Due to the need to ensure that the MMO meets the OSPAR guidelines with regard to notification of chemicals those activities that involve the need for additional or amendments of chemicals should have the notification status to the MMO changed to yes, such as, Generator replacement, Scheduled general maintenance, Painting and cleaning and Grout and corrosion works.	The Applicant received additional information from the MMO on this point on 04 July 2024 and will be responding in due course.
2.12.122	5.8.13 The MMO notes that point 5.6.5 of our Relevant Representations relating to the inclusion in Table B-1 of the total volume anticipated for disposal as a result of drilled arisings trenching burying and ground clearance has not been addressed.	The Applicant will include these calculations in an updated Outline Offshore Operations and Maintenance Plan [REP3-044] to be submitted at Deadline 6.
Applicant's Response to Examining Authority's First Written Questions Rev A (REP3-051)		
<u>5.9 Benthic comments</u>		
2.12.123	5.9.1 The MMO thanks the applicant for responding to questions BP 1.2 & BP 1.3 of the Examining Authority's Written Questions and considers that these matters satisfactorily addressed.	The Applicant welcomes the MMO's agreement on the Applicant's responses to the Examining Authority's Written Questions on Predictive Modelling and the Offshore Use of Plastics.
<u>5.10 Fisheries comments</u>		

Ref	Deadline 4 submission	Applicant's response
2.12.124	<p>5.10.1 In reference to FS.120 of the Examining Authority's Written Questions and requests for information (document reviewed in point 10), the response states that the Applicant has submitted further information on sandeel habitat which follows the MarineSpace (2013) methodology. The Applicant summarises that based on available evidence the Proposed Development would not be considered a key area for sandeel spawning activity. The MMO have not reviewed a 'heat' map showing areas of suitable sandeel habitat that follows the MarineSpace (2013) method. In the latest revision of the ES, the Applicant completed a sandeel potential habitat suitability assessment using particle size analysis (PSA) data from site-specific sediment grab samples that were collected from within and around the array (See Figure 8.9 of the ES Volume 3, Chapter 8: Fish and shellfish – Figures, February 2024, Revision B). The sediment samples were classified, based on their composition, as 'preferred', 'marginal' or 'unsuitable' for sandeel habitat, based on the method described by Latto et al., (2013). The PSA grab locations were presented in mapped form in Figure 8.9 of the ES, alongside broadscale EMODnet seabed substrate data. Whilst the data used in Figure 8.9 are appropriate for use in determining sandeel habitat suitability, the resulting Figure 8.9 does not result in a MarineSpace style 'heat' map.</p>	<p>The Applicant directs the MMO to the sandeel heatmap presented in Deadline 1 – 8.25.1 Applicant's Post Hearing Submission – Issue Specific Hearing 1 Appendix 9 -Further information for Action Points 38 and 39 – Underwater Noise [REP4-061], which were submitted into the Examination at Deadline 1, and subsequently revised at Deadline 4, following receipt of feedback from the Centre for Environment, Fisheries and Aquaculture Science (Cefas) and the MMO at Deadline 3.</p>
2.12.125	<p>5.10.2 The MarineSpace (2013) method uses a suite of data including PSA data, British Geological Survey (BGS) data, Regional Seabed Monitoring Plan (RSMP) data as well as fishing fleet data and scientific publications, to determine potential sandeel habitat and is methodically layered to generate a single 'heat' map output. Simply put, areas of higher 'heat' are representative of areas with higher potential as sandeel habitat. Areas of 'heat' are assigned a score based on confidence of the data. The PSA data shown in Figure 8.9 indicate that the majority of the sediments in the study area are comprised of 'suitable / marginal' habitat, as opposed to 'prime' or 'subprime' preferred habitats. The accompanying EMODnet data also indicate that the broadscale sediments are predominantly coarse sediments, which would be considered less favourable as sandeel habitat, with some smaller areas of sand that are considered suitable habitat. These data correlate well with the existing understanding that the Project area is located within an area of sandeel habitat which is a low intensity spawning ground (as per Ellis et al., 2012) which covers a large area along the south coast of England.</p>	<p>The Applicant directs the MMO to the Applicant's response to reference 2.12.124.</p>
2.12.126	<p>5.10.3 Notwithstanding the MMOs comments above, whilst the Applicant has not followed the MarineSpace (2013) method to provide a sandeel habitat 'heat' map, the data presented in the ES are adequate for the purpose of assessing potential impacts to sandeel from the construction and operation of Rampion 2. The Applicant's assessment for all impacts and effects to sandeel resulted in 'Minor Adverse' significance, which has been assessed as Not Significant against the EIA terms. Given the wider area of sandeel habitat available in this region and based on the knowledge that the project area is not considered to be of local or regional importance to sandeel, nor is it a high intensity spawning ground, the MMO are satisfied with the Applicant's conclusion.</p>	<p>The Applicant directs the MMO to the Applicant's response to reference 2.12.124.</p>
<p>5.11 Underwater Noise</p>		
2.12.127	<p>5.11.1 The MMO acknowledges the applicant's consideration of noise abatement systems and options through the production of Appendix H FS: Noise Thresholds for Black Seabream, and Appendix I MM: Noise Abatement Systems (REP3-051). The MMO notes that it is the applicant's intention to use a combination of DBB) and reduced intensity</p>	<p>The Applicant welcomes the MMO's agreement and confirms that the main objective of the proposed mitigation is to achieve the appropriate and sufficient noise reduction levels rather than specify precise equipment at this stage. The Applicant however confirms, that as detailed in the In Principle Sensitive Features Mitigation Plan</p>

Ref	Deadline 4 submission	Applicant's response
	hammer technology such as PULSE or MNRU hammer. The MMO understands that the methods presented are indicative of the types of system to be implemented however, the precise equipment to be used will be selected based on the most appropriate equipment available at the time.	[REP4-053] (updated at Deadline 5), the Applicant has committed to the use of DBBC throughout the piling campaign. To mitigate against the potential for impacts to nesting black seabream the Applicant proposes to use a combination of DBBC another noise abatement from March through to July.
2.12.128	5.11.2 The MMO notes the applicant's statement that the primary objective of the chosen mitigation should be to achieve the greatest noise reduction levels in respect of an agreed threshold, rather than specify precise equipment at this stage.	The Applicant welcomes the MMO's agreement and confirms that the main objective of the proposed mitigation is to achieve the appropriate and sufficient noise reduction levels rather than specify precise equipment at this stage.
2.12.129	5.11.3 The MMO acknowledges the additional modelling provided is based on the proposed mitigation measures achieving a predicted 20dB reduction in noise as opposed to the 22dB and 25dB reductions presented in the In Principle Sensitive Features Mitigation Plan and that this is based on the available information on these noise abatement systems from the Institute of Technical and Applied Physics (ITAP).	The Applicant confirms that additional work was undertaken looking into the efficacy of Noise Abatement Systems (NAS). This work is detailed in Information to support efficacy of noise mitigation / abatement techniques with respect to site conditions at Rampion 2 Offshore Windfarm [REP4-067] . As noted by the MMO, as detailed in Information to support efficacy of noise mitigation / abatement techniques with respect to site conditions at Rampion 2 Offshore Windfarm [REP4-067] , in consideration of the site characteristics and noise abatement levels, and taking into consideration the outputs of live monitoring of numerous projects whereby NAS have been applied successfully, it is apparent that up to 20dB noise reduction can be achieved. The In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5) has been updated to reflect the outputs of this work.
2.12.130	5.11.4 The MMO advises that the applicant needs to provide evidence to support the estimated dB reductions for each proposed noise abatement systems. This evidence also needs to consider noise frequency not just dB level. The efficacy of a noise abatement system to reduce the risk of impact depends on the frequency range at which sound energy is reduced and on the target species, as each species is sensitive to a certain frequency range.	The Applicant directs the MMO to the Applicant's response to reference 2.12.129 . Although the effectiveness of noise mitigation does change with frequency, the variety of fish species means that frequency weightings are not typically included, and thresholds and sensitivities are assumed unweighted. Classifying a system this way results in a worst case scenario where the very lowest frequencies control the unweighted level, which tends to be where the performance of a system is worse, but the peak hearing sensitivity of a fish species is rarely this low. For example, the hearing sensitivity of red sea bream (Ishioka <i>et al</i> , 1988) as a proxy for black sea bream (unavailable) shows peak hearing sensitivity at 200 Hz. At this frequency, a DBBC provides an estimated attenuation of >25 dB (Bellmann <i>et al</i> . 2020). The estimated performance of a bubble curtain only drops below 15 dB at <30 Hz, a frequency at which the red sea bream is highly insensitive (Ishioka <i>et al</i> , 1988). Therefore, this unweighted performance is expected to underestimate the real benefit of the DBBC.
2.12.131	5.11.5 In addition to these comments' further responses to the Applicant's Response to Examining Authority's First Written Questions are provided in the table below:	

Table 2 – MMO Response to Applicant's response to Examining Authority's First Written Questions

Reference	Question To:	Applicant response	MMO response	Applicant response
FS 1.3	The Applicant. <i>Noise Abatement Measures</i>	The Applicant will submit additional information to the Examination at Deadline 4. This will	The MMO acknowledge the Applicant's comment and will await	This is noted by the Applicant.

Ref	Deadline 4 submission	Applicant's response		
	<p>The Applicant has stated that it is undertaking additional work to provide a comparison of the environmental conditions at the Proposed Development with other projects where Noise Abatement Systems have been deployed, and this will be submitted to the Examination in due course [REP1-107 Page 257]. Explain what information is likely to be received and when. This should include a minimum decibel level reduction expected for each noise abatement method for the Rampion 2 site and offshore environment.</p>	<p>include a review of the commercially available noise abatement technology, referenced to publicly available information on the effectiveness of known applications in other markets including Germany. Information will also be provided on the emerging policy being developed by the Department for Environment, Food and Rural Affairs (Defra) in order to reduce environmental impact from subsea noise whilst enabling projects to still be delivered without onerous seasonal restrictions which would otherwise make them impractical to construct.</p>	<p>further information to be submitted at Deadline 4.</p>	
FS 1.4	<p>The Applicant Natural England MMO</p> <p><i>Noise Thresholds for Black Seabream</i></p> <p>Natural England does not support the use of 141 decibels (dB) re 1 micropascal (uPa) Sound Exposure Level – Single Strike (SELss) as a threshold for black seabream behavioural disturbance and does not agree that the threshold is highly</p>	<p>A thorough review of available literature and data was undertaken by the Applicant, and, having identified no species-specific information for black seabream, the literature review was continued to identify a suitable proxy species to further evidence the likely responses of black seabream to noise emissions. Seabass were identified as a suitable proxy species due to being morphologically similar to black seabream, at an equivalent life stage to the</p>	<p>It was noted by the MMO that Seabass are anatomically and physiologically similar to seabream, though they are not in the same family or genus. There is a paucity of data for species that are more closely related. Given that there is peer-review scientific literature for noise exposure on seabass, it does seem an appropriate proxy species in this regard. However, it was noted that the species do not have the same breeding</p>	<p>The Applicant reiterates that in the absence of a species-specific disturbance threshold for black seabream (following a thorough literature review), seabass were identified as a suitable proxy species. The Applicant acknowledges that seabass and black seabream are not in the same family or genus, nor do seabass exhibit the same breeding behaviours but the Applicant has instead identified a suitable proxy based on the physiology and hearing capability of the species (which comprise the critical attributes).</p> <p>The Applicant, therefore, maintains their position that seabass is a suitable proxy for black seabream. The Applicant is therefore confident that a disturbance threshold of 141 dB SELss (Kastelein <i>et al.</i>, 2017) is a suitably precautionary threshold for the assessment of underwater noise impacts on nesting black seabream.</p>

Ref	Deadline 4 submission	Applicant's response
	<p>precautionary [REP1-059a, Point E34]. Explain whether there are any other species that could be used as a proxy for black seabream in these circumstances that could be agreed on by all parties. If so, this should be put forward to the Examination at Deadline 3.</p>	<p>nesting black seabream. Red seabream were also identified as being a suitable proxy species, due to being in the same family as black seabream (Sparidae), and being in the same hearing category, (categories as defined by Popper et al. (2014)). Sprat are suggested as a suitable proxy by Natural England and the Marine Management Organisation (MMO), based on a study by Hawkins et al. (2014), which recorded initial responses of the species at 135 dB SELss. The Applicant does not support the use of this species as proxy, as sprat have a greater hearing capability and higher sensitivity (Group 4 receptor (Popper et al., 2014)) to underwater noise than black seabream (Group 3 receptor), and are therefore expected to have a much increased reaction to any noise stimulus. In addition, the threshold (135 dB SELss) is based on a startle response of sprat which are not involved in any particular activity (i.e. not spawning), and located in quiet loch. It is therefore not considered appropriate to use this threshold within a much noisier area such as the English Channel (which is subject to high levels of anthropogenic activity and consequently noise) as the fish within this area would reasonably</p> <p>behaviours, and this combined with any physiological and behavioural effects from exposure to piling noise is of concern. For clarity, please note that the MMO are not suggesting sprat as a suitable proxy for seabream per se. The MMO agree with the Applicant that sprat have a greater hearing capability and higher sensitivity to underwater noise than black sea bream. The reason a 135 dB SELss threshold has been recommended is on the basis that the Hawkins et al. (2014) study is (a) of relevance to pile driving, and (b) it is one of the few known (peerreviewed) studies undertaken in the wild (rather than in a laboratory setting). The MMO acknowledge that sprat is a hearing specialist, and therefore, the 135 dB re 1 µPa_{2s} threshold is likely to be conservative for species that are not 'hearing specialists' or do not possess a specialised connection between the swim bladder and inner ear. Any behavioural threshold must be appropriately caveated, and caveats must also be applied to the 135 dB SELss threshold.</p>

Ref	Deadline 4 submission	Applicant's response
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be expected to be accustomed to higher levels of noise and would thus have a correspondingly lower sensitivity to disturbance. The MMO have highlighted a study by Kastelein et al. (2017), which reported a 50% initial startle response (sudden short-lived changes in swimming speed) which occurred at an SELs of 131 dB re 1 mPa² s for 31 cm seabass and 141 dB re 1 mPa² s for 44 cm seabass. Of these thresholds, the MMO have suggested the application of the 131 dB re 1 mPa² s threshold to inform the impact assessment on nesting black seabream. The Applicant however, is confident that a threshold of 141 dB re 1 mPa² (as based on seabass as proxy) is more appropriate. As reported by Kastelein et al. (2017), the thresholds are based on startle responses of seabass, which could be a brief change in swimming speed, direction, or body posture, in at least one of a group of four fish, with a very limited time duration, as opposed to a full abandonment of the ensonified area. Furthermore, there was no evidence of any consistent sustained response to sound exposure by the study animals (changes in

Ref	Deadline 4 submission	Applicant's response
	<p>school cohesion, swimming depth, and speed) at levels up to 166 dB SELss. As informed by Popper et al., (2014), behavioural disturbances are considered to be long term changes in behaviour and distribution, and should not include effects on single animals, or small changes in behaviour such as startle responses or minor movements. The Applicant therefore suggests the use of the disturbance threshold of 141 dB SELss (based on 44 cm seabass, as reported in Kastelien et al. (2017)) as suitably precautionary for an impact assessment on nesting black seabream. This is as the observed effects from underwater noise from pile driving on seabass were so minor (no sustained responses observed), there are unlikely to be any adverse effects on their ecology (such as sustained disturbance to nesting behaviours). Therefore, this noise level is not considered to have any potential to trigger a significant effect on the black bream population within the Marine Conservation Zone (MCZ) and nor is it even likely to have an individual effect on breeding success. As the Applicant has proposed, the 141dB SELss limit, as based on seabass as a proxy, would be the</p>	

Ref	Deadline 4 submission	Applicant's response
FS 1.5	<p>The Applicant</p> <p><i>Noise Thresholds for Black Seabream</i></p> <p>The MMO suggests a threshold of 135db SELss is used (as per</p>	<p>maximum at the boundary of the Kingmere MCZ, and only at the maximum blow energy, no feature of the MCZ would even be expected to be exposed to this level of impact and therefore it remains conservative and sufficient to ensure no significant effects to the black bream feature of the MCZ. The Applicant would be happy to consider an alternative proxy but is not aware (following the comprehensive literature review) of an alternative proxy species (other than those already presented) which offers the same level of similarity to black seabream, i.e. same physiology and hearing capability (which comprise the critical attributes). Whilst the breeding habit differs between seabass and black seabream, the sensitivity of the fish to noise stimuli is physiologically derived, and therefore this proxy species as suggested by the Applicant is considered appropriate for the purposes of defining black bream noise response.</p> <p>The Applicant directs the Examining Authority to Appendix H FS: Noise Thresholds for Black Seabream (of this document) where this is addressed.</p>

Ref	Deadline 4 submission		Applicant's response	
FS 1.9	<p>Hawkins et al, 2014) for the reasons set out in section 7.1.6 [REP2-035]. Please respond to the MMO comments in this section of their submission. Furthermore, if this threshold was adopted by the Applicant, please set out how that would affect mitigation such as zoning of piling, using diagrams where possible.</p>	<p>The Applicant directs the Examining Authority to their response to Point E15, in Deadline 2 Submission – 8.49 Category 8: Examination Documents – Applicant's Response to Prescribed Consultees' Written Representations [REP2-026].</p>	<p>within the main body of this section of underwater noise comments.</p>	<p>The Applicant directs the MMO to their responses to references 2.12.74 and 2.12.76 above.</p>
FS 1.15	<p>Natural England MMO</p> <p><i>Piling Noise – Background Noise</i></p> <p>The Applicant has stated that as the presence of the noise at the threshold level would be limited in time and location, then for most of the time and place within the Kingmere MCZ, the noise would not be far in excess of noise that is already present at this site [REP2-026, Point E13, Page 102]. Provide a response on whether this is an agreed matter.</p>	<p>As presented in the In Principle Sensitive Features Mitigation Plan [REP1-012] (updated at Deadline 3), through the implementation of noise</p>	<p>The MMO acknowledges the Applicant's comment. The MMO notes that any noise abatement measures and</p>	<p>The Applicant confirms that a revised In Principle Sensitive Features Mitigation Plan [REP4-053] was submitted at Deadline 4. This reflects the Applicant's commitment to use double big bubble curtains (DBBC) throughout the piling campaign (Commitment C-265). The mitigated underwater noise impact ranges, with the use of DBBC are also presented within the In Principle Plan. Furthermore, additional work was undertaken looking into the efficacy of NAS, this is detailed in</p>

Ref	Deadline 4 submission	Applicant's response
FS 1.24	<p data-bbox="596 1335 804 1398">MMO Mitigated Noise</p> <p data-bbox="596 1440 902 1913"><i>Thresholds for Herring</i> The Applicant has presented the unmitigated behavioural impact ranges on herring, and the reduced impact contours from the minimal noise abatement offered by the mitigation proposed (-6dB reduction from the use of a low noise</p>	<p data-bbox="1317 1335 1644 1885">The MMO refers the applicant to Paragraph 4.5.9 of our Deadline 3 response (REP3-076) which addressed the significant overlap with high intensity spawning for the East piling location represented in Figure 4-3 and Figure 4-4. The MMO is of the opinion that basing a modelling exercise on the minimal noise abatement offered is a suitably precautionary</p> <p data-bbox="1670 1335 2792 1885">The Applicant has since committed to the use of double big bubble curtains (DBBC) throughout the piling campaign. The implementation of this mitigation will further reduce the impact ranges of underwater noise (including behavioural effect ranges) to outside any areas of high-density herring eggs and larvae (as defined by the IHLS data), and the spawning ground (as defined by Coull et al., 1998). Commitment C-265 has been updated accordingly to reflect this proposed mitigation. The updated commitment is as follows: C-265: <i>“Double big bubble curtains will be deployed as the minimum single offshore piling 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:</i></p> <ul data-bbox="1715 1717 2748 1885" style="list-style-type: none"> • <i>sensitive receptors at relevant Marine Conservation Zone (MCZ) sites and reduce the risk of significant residual effects on the designated features of these sites;</i> • <i>spawning herring; and</i> • <i>marine mammals.”</i>

Ref	Deadline 4 submission		Applicant's response
FS 1.25	<p>hammer) during the Downs herring spawning period relative to the spawning ground [REP1- 020, Paragraph 4.1.12, Figures 4-3 and 4- 4]. Confirm whether there would be no behavioural effects on herring through piling noise if mitigation is used. Explain whether the 6db noise reduction used by the Applicant appropriate for such an exercise.</p> <p>MMO</p> <p><i>Behavioural Effects on Herring Spawning</i> In a worst-case scenario, explain the potential behavioural effects of piling noise on herring whilst spawning.</p>	<p>and appropriate approach.</p> <p>The MMO would highlight that behavioural effects are particularly difficult to assess, since they are highly dependent on a wide range of factors including behavioural context. For example, factors include the loudness and frequency of the sound, the age and sex of the fish, time of day. Furthermore, a fish that is engaged in a particular activity (such as spawning, feeding or protecting its nest) may pay less attention to a sound than a fish that is swimming around or part of a school. Depending on the degree of the behavioural response, there may not be a significant impact. In the case of spawning</p>	<p>The Applicant maintains their position that the behavioural effects threshold derived from Hawkins et al. (2014) is not appropriate for determining the potential impact ranges of behavioural effects on sensitive receptors. Notwithstanding this the Applicant has presented the behavioural impacts threshold based on the Hawkins et al. (2014) study, relative to the Downs herring stock spawning ground as defined by Coull et al. (1998) in Figures 4-3 and 4-4 of Deadline 1 Submission – 8.25.1 Applicant's Post Hearing Submission – Issue Specific Hearing 1 Appendix 9 - Further information for Action Points 38 and 39 – Underwater Noise [REP4-061]. As evident in Figures 4-3 and 4-4, with the implementation of DBBC (15 dB reduction in noise levels) there is no interaction of the highly precautionary behavioural impacts noise contours with the herring spawning ground (as defined by Coull <i>et al.</i>, 1998).</p> <p>The Applicant agrees with the MMO, regarding the difficulty in assessing disturbance impacts on sensitive receptors such as herring. In particular this is due to the variety of responses that could be exhibited, including startle response (C-turn), strong avoidance behaviour, changes in swimming or schooling behaviour, or changes of position in the water column (e.g. Hawkins et al., 2014). As detailed in Chapter 8: Fish and shellfish ecology, Volume 2 of the Environmental Statement [APP-049] (updated at Deadline5), depending on the strength of the response and the duration of the impact, there is the potential for some of these responses to lead to significant effects at an individual level (e.g. reduced fitness, increased susceptibility to predation) or at a population level (e.g. avoidance or delayed migration to key spawning grounds, disturbance spawning). The Applicant agrees with the MMO that motivation can also influence the behavioural response of a receptor, for example, herring demonstrate a clear change in reaction towards sound pressure noise if they are engaged in specific behaviours such as spawning or feeding. The reaction to noise is dramatically reduced in these cases, or not apparent compared to when not engaged in these activities (Nøttestad et al., 1996; Axelsen et al.,2000; Misund, 1994; Skaret et al., 2005).</p> <p>Notwithstanding this, the Applicant has committed to the use of double big bubble curtains (DBBC) throughout the piling campaign. The implementation of this mitigation will further reduce the impact ranges of underwater noise (including behavioural effect ranges) to outside any areas of high-density herring eggs and larvae (as defined by the IHLS data), and the spawning ground (as defined by Coull et al., 1998). Commitment C-265 has been updated accordingly to reflect this proposed mitigation. The updated commitment is as follows: C-265: <i>“Double big bubble curtains will be deployed as the minimum single offshore piling noise mitigation technology to deliver underwater noise attenuation for all</i></p>

Ref	Deadline 4 submission	Applicant's response
MM 1.1	MMO <i>Draft Unexploded Ordnance Clearance Marine Mammal Mitigation Protocol</i> In the MMO's responses to WRs submitted at Deadline 2 [REP2 - 035] the MMO states it acknowledges the Applicant's creation of the Draft Unexploded Ordnance Clearance Marine Mammal Mitigation Protocol [APP -237] and that the Applicant is confident that appropriate mitigation can be secured. Confirm if there are any outstanding concerns from the MMO, particularly but	<p>herring, a significant impact to a population may occur, if the piling sound causes the fish to move away from their spawning grounds or cease reproductive activities.</p> <p>foundation installations throughout the construction of the Proposed Development where percussive hammers are used in order to reduce predicted impacts to:</p> <ul style="list-style-type: none"> • sensitive receptors at relevant Marine Conservation Zone (MCZ) sites and reduce the risk of significant residual effects on the designated features of these sites; • spawning herring; and • marine mammals.” <p>The Applicant maintains their position that the behavioural effects threshold derived from Hawkins et al. (2014) is not appropriate for determining the potential impact ranges of behavioural effects on sensitive receptors. Notwithstanding this the Applicant has presented the behavioural impacts threshold based on the Hawkins et al. (2014) study, relative to the Downs herring stock spawning ground as defined by Coull et al. (1998) in Figures 4-3 and 4-4 of Deadline 1 Submission – 8.25.1 Applicant's Post Hearing Submission – Issue Specific Hearing 1 Appendix 9 - Further information for Action Points 38 and 39 – Underwater Noise [REP4-061]. As evident in Figures 4-3 and 4-4, with the implementation of DBBC (15dB reduction in noise levels) there is no interaction of the highly precautionary behavioural impacts noise contours with the areas of high-density herring eggs and larvae (as defined by the IHLS data) or the herring spawning ground (as defined by Coull <i>et al.</i>, 1998).</p> <p>There remains disagreement on the sensitivity score for cetaceans and the Permanent Threshold Shift (PTS) significance. The sensitivity scoring however does not have a major impact on the overall assessment, and the focus should be on ensuring that appropriate mitigation is put in place to reduce the risk of potential impact. As stated above in reference point 2.6.50 of our response to Applicant's Response to Deadline 2 Submissions Rev A (REP3 -051).</p> <p>(i) Booth, Heinis & Harwood (2018) is a commercial report whose</p> <p>The Applicant agrees that PTS is a form of injury and that it can only be permitted to occur to an EPS if an injury licence is in place. The Applicant agrees that the focus should be on ensuring that appropriate mitigation is put in place to reduce the risk of potential impact. This is addressed within the Draft Unexploded Ordnance Clearance Marine Mammal Mitigation Protocol [APP-237] and will be fully assessed within an EPS risk assessment post consent.</p> <p>Regarding standards of scientific evidence We recognise the use of best available evidence is a key element of the precautionary principle in support of decision making. We believe the evidence presented passes the comprehensive Quality Assurance approach the MMO has mapped out as part of its Evidence Strategy. We note the use of expert advice is clearly stipulated as a key step in MMO's assessment – such that expert knowledge is a key part of MMO's process. Booth <i>et al</i> (2018) and expert elicitation passes many of the tests in Step 4 of Table 2 of their Process for Evidence Quality Assurance document.</p> <p>Regarding the use of expert elicitation The European Food and Safety Authority (which is an Agency of the EU) in 2012 indicated:</p> <p><i>“Quantitative risk assessments facilitate the decisions of risk managers. In the EU, risk assessment in food and feed safety is the responsibility of the European Food Safety Authority (EFSA). Quantitative risk models should be informed by systematically reviewed scientific evidence, however, <u>in practice empirical evidence is often limited: in such cases it is necessary to turn</u></i></p>

Ref	Deadline 4 submission	Applicant's response
	<p>not exclusively, relating to:</p> <ul style="list-style-type: none"> a) The Marine Mammal Underwater Noise Assessment relating to fleeing animals b) Permanent Threshold Shift significance c) The TTS assessment d) Sensitivity score for cetaceans 	<p>findings have not been published in the peer reviewed literature. We could argue that it does not meet our usual standards of scientific evidence, and it is not unusual for us not to accept evidence put forward on this basis.</p> <p>(ii) Regardless of the report's claims about the potential implications of PTS for vital rates, permanent damage to the auditory system of a marine mammal is a form of injury, and as such can only be permitted to occur if an injury licence is in place (at least according to our understanding of the relevant protected species legislation)</p> <p><u>to expert judgement.</u> <i>Psychological research has shown that unaided expert judgement of the quantities required for risk modelling - and particularly the uncertainty associated with such judgements - is often biased, thus limiting its value. Accordingly methods have been developed for eliciting knowledge from experts in as unbiased a manner as possible. In 2012, a working group was established to develop guidance on expert knowledge elicitation appropriate to EFSA's remit. The resulting Guidance first presents expert knowledge elicitation as a process beginning with defining the risk assessment problem, moving through preparation for elicitation (e.g. selecting the experts and the method to be used) and the elicitation itself, culminating in documentation."</i></p> <p>This highlights that expert elicitation is the correct approach to be used when empirical evidence is limited. As outlined in Booth <i>et al</i> (2018), the expert elicitation workshop followed strict methods in a formal process that have been developed specifically for this purpose: "We employed the Sheffield Elicitation Framework (SHELF) approach in the expert elicitation (Oakley and O'Hagan 2016), using the SHELF v.3.0 in the workshop".</p> <p><u>Regarding the certainty in conclusions</u></p> <p>With regard to certainty, as outlined in Booth <i>et al</i> (2018), the group of world-leading experts in marine mammal hearing that were involved in the expert elicitation were strongly convinced that a 6 dB PTS is expected to make very little difference to animal vital rates (a ~75% chance of <1% change in vital rates resulting from a 6 dB PTS in most cases).</p> <p><u>Regarding the QA process</u></p> <p>With regards to a suitable QA process: the Booth <i>et al</i> (2018) report was government- (Department for Business, Energy, and Industrial Strategy (BEIS), now Department for Energy Security and Net Zero (DESNZ)) funded, and went through a full QA processes before it was finalised and released. In addition to this, BEIS (now DESNZ) were in attendance at the expert elicitation workshop.</p> <p>While it is acknowledged that this study has not been published in the peer-reviewed literature, it should be noted that the experts who participated in the elicitation were recognized as world-leading experts in this field, each of which would be highly appropriate as peer-reviewers of the work, and that there was high agreement between the experts in the resulting best understanding of the effects of PTS.</p>

Ref	Deadline 4 submission	Applicant's response
MM 1.2	<p>Natural England MMO <i>Worst-case Piling Scenario for Marine Mammals</i> State whether there are any ongoing concerns with the Applicant's modelling of the worst-case scenario for piling in relation to marine mammals.</p>	<p>(iii) As a rule, the use of expert elicitation to derive estimates of quantitative variables (in this case vital rates) should be treated with a large degree of scepticism. The uncertainties are large and the evidence is sparse.</p> <p>The MMO consider that comments regarding the underwater noise assessment and modelling in relation to Marine mammals which we raised during the ES review consultation have largely been addressed. Construction noise monitoring should include measurements of noise generated by the installation of the first four piled foundations of each piled foundation type to be installed. The MMO would appreciate if the modelling details we have asked for could please be included in future iterations of the modelling reports. The MMO has previously raised that Table 5-2 in Appendix 11.3 Underwater noise</p> <p>The Applicant confirms that all parameters including geometric spreading function are empirically derived. The size of the sources and the location of the noise source(s) within them will have a large impact on the sound transmission, and this will affect the sound transmission as much as if not more than the spectrum.</p>

Ref	Deadline 4 submission	Applicant's response
MM 1.3	<p>The Applicant Natural England MMO Offshore In-principal Monitoring Plan Natural England's Risk and Issue log submitted at Deadline 2 [REP2-041] continues to include an amber concern (C40) with the marine mammal section of the Offshore In-Principal Monitoring Plan, regarding proposed post-consent monitoring only</p>	<p>No significant effects are predicted based on the marine mammal underwater noise assessment (see Chapter 11: Marine mammals, Volume 2 of the ES [REP1-004]), therefore the Applicant maintains that post-consent monitoring for marine mammals is not required. The mitigation measures (MMOb, PAM, ADDs) detailed in the Draft Piling Marine Mammal Mitigation Protocol [APP236] and the Draft</p>
		<p>assessment technical report (APP-149) provides a summary of the estimated unweighted source levels and transmission losses for the different construction (continuous) noise sources considered. Figure 5-1 shows the 1/3 octave frequency bands used as a basis for the Southall et al. (2019) weightings used in the simple modelling. The MMO understands that propagation loss is a function of the environment. Please could the Applicant explain why the propagation loss varies quite significantly between the different sources, particularly when the source spectra (as per Fig. 5-1) are not that different?</p> <p>As a minimum, it is expected that the Applicant will undertake monitoring of the first four piled foundations of each foundation type. Noise measurements should be made in line with the Good Practice Guide No.133: Underwater Noise Measurement (National Physical Laboratory, 2014). It will be important to compare the noise propagation modelling presented in</p>
		<p>The Applicant confirms they will undertake noise monitoring of four of the first 12 piled foundations of each foundation type to be installed and that the noise monitoring will be in line with the Good Practice Guide No.133: Underwater Noise Measurement (National Physical Laboratory, 2014).</p> <p>The Applicant has submitted an updated Offshore In Principle Monitoring Plan [REP4-055] 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:</p> <ul style="list-style-type: none"> 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;

Ref	Deadline 4 submission	Applicant's response
	<p>including the first 4 piles. It states there is no consideration of monitoring the effectiveness of the mitigation measures in reducing the impacts to acceptable levels.</p> <p>Unexploded Ordnance Clearance Marine Mammal Mitigation [APP237] detail standard mitigation for the industry, with studies and literature to support the effectiveness of the measures cited therein. The underwater noise will be monitored for the first four piles as per the industry standard will validate the noise modelling undertaken at the post-consent stage in line with the most recent project description. This will be used to validate the conclusions presented in the final Piling Marine Mammal Mitigation Protocol produced for the postconsent stage. At this stage the Applicant has not committed a particular Noise Abatement System for mitigation therefore the specific design for monitoring mitigation outcomes is not detailed. The Applicant will continue to consider mitigation methods. The noise monitoring will take place during the start of the piling program with noise monitoring undertaken of the first four piles. Lessons learnt from other projects and Noise Abatement System (NAS) trials will be considered as part of the decision-making process regarding efficacy of NAS. The effectiveness of potential mitigation measures has therefore</p>	<p>the Environmental Statement (and subsequent noise assessments), to the underwater noise results (measured data) generated during field monitoring. Such comparisons should be presented in a quantitative way. In particular, how do the measured noise spectra of pile driving compare with the predictions? A direct comparison, for example, could be shown unambiguously in a figure, as this is the primary purpose of the report and should be its main finding. The MMO note at this stage, the Applicant has not committed a particular Noise Abatement System for mitigation and, therefore, the specific design for monitoring mitigation outcomes is not detailed. The Applicant will continue to consider mitigation methods. The MMO has previously raised in point 7.1.20 of our Deadline 2 response (REP2-035) that in order to determine the efficacy of noise abatement systems at Rampion 2, evidence will be required in the form of measurements of piling noise with and without noise</p> <ul style="list-style-type: none"> • to validate mitigation zones implemented during piling; and • to validate compliance with the specified noise threshold proposed for black seabream at the Kingmere Marine Conservation Zone site, should one be implemented. <p>The Applicant has now committed to the use of double big bubble curtains (DBBC) throughout the piling campaign. The implementation of this mitigation will further reduce the impact ranges of underwater noise. Commitment C-265 has been updated accordingly to reflect this proposed mitigation. The updated commitment is as follows: C-265: <i>“Double big bubble curtains will be deployed as the minimum single offshore piling 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:</i></p> <ul style="list-style-type: none"> • <i>sensitive receptors at relevant Marine Conservation Zone (MCZ) sites and reduce the risk of significant residual effects on the designated features of these sites;</i> • <i>spawning herring; and</i> • <i>marine mammals.”</i> <p>Therefore, unmitigated piling will not be undertaken throughout the piling campaign and it is unlikely the Applicant will be able to obtain unmitigated piling measurements for comparison.</p> <p>The Applicant confirms that additional work has been undertaken looking into the efficacy of Noise Abatement System (NAS). This work is detailed in Information to support efficacy of noise mitigation / abatement techniques with respect to site conditions at Rampion 2 Offshore Windfarm [REP4-067]. As detailed in Information to support efficacy of noise mitigation / abatement techniques with respect to site conditions at Rampion 2 Offshore Windfarm [REP4-067], in consideration of the site characteristics and noise abatement levels and taking into consideration the outputs of live monitoring of numerous projects whereby NAS have been applied successfully.</p> <p>Non-abated piling ranges have been modelled for marine mammals and are presented in Chapter 11: Marine mammals, Volume 2 of the Environmental Statement [REP4-020] (updated at Deadline 5).</p>

Ref	Deadline 4 submission	Applicant's response
	<p>not been detailed further. The minimum and maximum noise reduction efficacy for various Noise Abatement System (NAS) have been detailed in Table 5-3 in Draft Piling Marine Mammal Mitigation Protocol [APP236]. The Applicant is providing more information in regard to the limitation of NAS measures in Appendix I MM: Noise Abatement Systems (of this document).</p>	<p>abatement. It is understood that the black seabream spawning (nesting) season is March to July. Therefore, we would recommend obtaining measurements of non-abated piling outside of this window.</p>

5.12 Applicant's Response to Deadline 2 Submissions Rev A (REP3-051)

2.12.132 5.12.1 The following table contains MMO responses to questions raised by the Applicant in Table 4.6 (Applicant's Response to Marine Management Organisation's Deadline 2 Submission).

Table 3 – MMO responses to questions raised by the Applicant.

Reference	Comment / Question	Applicant response	MMO response	Applicant response
<p>2.6.41 Page 103</p>	<p>1.12.5 MMO 4.6.22: The MMO maintains the position that the use of a threshold of 141 decibel (dB) re 1 micropascal (µPa) Sound Exposure Level, single strike (SELss) as defined by Kastelein et al., (2017) is not an appropriate or conservative threshold for adult black Sea Bream. The MMO welcomes the Applicant's commitment to continued engagement with the MMO and Natural England to seek</p>	<p>The Applicant would like to request further evidence from the Marine Management Organisation as to their position of the inadequacy of the proposed threshold. In particular, it would be useful understand how peer reviewed literature supports the application of the 135dB threshold (as based on Hawkins et al., (2014)) to inform impact assessments, as opposed to the 141dB threshold (as defined by Kastelein</p>	<p>The 'behavioural' threshold of 135 dB SELss (single strike sound exposure level), is recommended on the basis that Hawkins et al. (2014) is one of the few known studies that was undertaken in the wild (rather than in a laboratory setting). Hawkins et al. (2014) exposed schooling sprat to short sequences of repeated impulsive playback sounds at different sound pressure levels, to resemble that of a percussive (or impact) pile driver. The sound pressure levels to which the fish schools responded on 50% of</p>	<p>The Applicant directs the MMO to their responses to references 2.12.74 and 2.12.76 above.</p>

Ref	Deadline 4 submission	Applicant's response
	<p>resolution in respect of this matter, and the MMO hopes that this can be resolved during examination.</p> <p>et al., (2017)). The Applicant notes that Hawkins et al (2014) recommend that the values from the study are not used to inform impact assessments.</p>	<p>presentations were 163.2 and 163.3 dB re 1 μPa peak-to-peak, and the single strike sound exposure levels were 135.0 and 142.0 dB re 1 μPa²s, for sprat and mackerel, respectively. Mackerel do not possess a swim bladder. The MMO acknowledge that sprat is a hearing specialist, and therefore, the 135 dB re 1 μPa²s threshold is likely to be conservative for species that are not 'hearing specialists' or do not possess a specialised connection between the swim bladder and inner ear. Any behavioural threshold must be appropriately caveated, and caveats must also be applied to the 135 dB SELss threshold. The MMO and Natural England have highlighted a study by Kastelein et al. (2017), which reported a 50% initial startle response (sudden short-lived changes in swimming speed) which occurred at <u>an SELss of 131 dB re 1 mPa²s for 31 cm seabass</u> and 141 dB re 1 mPa²s for 44 cm seabass. Of these thresholds, the MMO have suggested the application of the 131 dB re 1 mPa²s threshold to inform the impact assessment on nesting black sea bream to be appropriate, however the MMO restates that an appropriate threshold still needs to be agreed between all parties. As previously explained, black</p>

Ref	Deadline 4 submission	Applicant's response
2.6.50 Page 104	<p><u>Other comments</u></p> <p>1.14.1 MMO 4.7.10: The MMO acknowledges that the Applicant feels the sensitivity score for cetaceans is appropriate in the ES report. The MMO still recommend that cetaceans should be assessed as having a high sensitivity to PTS until the Applicant is able to demonstrate clearly that PTS would have a medium risk.</p>	<p>The Applicant disagrees with the Marine Management Organisation. The evidence available on marine mammal sensitivity to permanent threshold shift (PTS) does not align with the definition for High sensitivity (which states that vital rates are highly likely to be significantly affected). The Applicant has provided further evidence to support this here:</p> <p>Booth & Heinis (2018) provides a summary of the most complete assessment of the evidence base on the topic of how PTS affects vital rates in marine mammals. This process involved convening 7 world leading experts on marine mammal hearing and noise, a review of the available evidence collected to date (which has not markedly changed since 2018) and their</p> <p>sea bream attain reproductive maturity at 30 cm. Thus, it is more appropriate to draw comparisons to the smaller seabass in the Kastelein study.</p> <p>The MMO acknowledges that there remains disagreement on this point. While the MMO would still recommend that cetaceans should be assessed as having a high sensitivity to PTS we acknowledge that the sensitivity scoring itself, however, does not have a major impact on the overall assessment. The focus should be on ensuring that appropriate mitigation is put in place to reduce the risk of potential impact. Further comments:</p> <ul style="list-style-type: none"> (i) Booth, Heinis & Harwood (2018) is a commercial report whose findings have not been published in the peer reviewed literature. The MMO therefore would argue that it does not meet our usual standards of scientific evidence, and it is not unusual for us not to accept evidence put forward on this basis. (ii) Regardless of the report's claims
		<p>The Applicant has provided a response above in MM 1.1.</p> <p>Booth <i>et al</i> (2018) referred to TTS growth rates for 10% duty cycle exposures: “<i>This was combined with the growth rate of TTS (i.e. by how much TTS increases (in dB) with each increasing dB of sound exposure) using average growth rate values for the harbour porpoise from 1-2 and 6-7 kHz data for 10% duty cycle exposures, harbour seal data from Kastelein’s studies (Kastelein et al. 2013b, Kastelein et al. 2015b), and the 3-10 kHz data from Finneran’s research on bottlenose dolphins using fatiguing stimuli in the 3-10 kHz range (Finneran et al. 2005, Finneran et al. 2010, Finneran and Schlundt 2013). These references are presented in National Marine Fisheries Service (2016). The growth rate data was used to determine when PTS onset would occur (i.e., at 40 dB of TTS). In both cases, the growth rate in this frequency range is low (<1.0 dB/dB SEL) (due to low duty cycle appropriate for pile driving/airgun pulses).</i>”</p> <p>As stated in Appendix 11.2: Marine mammal quantitative underwater noise impact assessment, Volume 4 of the Environmental Statement [APP-148] for the pile driving at Rampion 2, the soft start and start of the ramp-up is 10 blows per minute for monopile worst case. “<i>For the pile driving at Rampion 2, the soft start and start of the ramp-up is 10 blows per minute for monopile worst case. Assuming a signal duration of around 0.5 sec for a pile strike, the soft start ramp-up will be a-8.3% duty cycle (0.5 sec pulse followed by 5.5 sec silence)</i>”.</p>

Ref	Deadline 4 submission	Applicant's response
	<p>best critical judgments given the evidence base. The experts worked together to collate and discuss the current state of knowledge of threshold shifts in response to low frequency broadband sound sources (later focusing on species specific judgments as part of the elicitation process). The experts agreed that “it was important to realise that reduced hearing ability does not necessarily mean a less fit animal (i.e. an animal of lower fitness).” Following a review and discussion of the current literature, experts determined: “Following exposure to low frequency broadband pulsed noise, TTS was typically observed 1.5 octaves (see Appendix 1 - Glossary) higher than the centre frequency of the exposure sound for seals and porpoise (Kastelein et al. 2012a, Kastelein et al. 2012b, Kastelein et al. 2013a, Finneran 2015). For piling noise and airgun pulses, most energy</p>	<p>about the potential implications of PTS for vital rates, permanent damage to the auditory system of a marine mammal is a form of injury, and as such could only be permitted to occur if a Wildlife Licence was obtained from the MMO.</p> <p>(iii) As a rule, the use of expert elicitation to derive estimates of quantitative variables (in this case vital rates) should be treated with a large degree of scepticism. The uncertainties are large and the evidence is sparse.</p> <p>As per page 16 (section 3.2.3 of the report), “Experts agreed it was unlikely that seals or bottlenose dolphin would experience more than 6 dB of PTS in the 2- 10 kHz frequency band following exposure to LFBP [low frequency broadband pulsed] due to low growth rates (under low duty cycle conditions)”.</p> <p>Specifics to check (i) ‘low duty cycle conditions’ – do these apply in this case?</p>

Ref	Deadline 4 submission	Applicant's response
	<p>is between ~30 Hz-500 Hz, with a peak usually between 100 – 300 Hz and energy extending above 2 kHz (e.g. Kastelein et al. 2015a, Kastelein et al. 2016)". Experts considered that if PTS were to occur, this would occur as a notch in hearing loss in a narrow frequency band (occurring somewhere between 2-10 kHz). They stressed this was not a loss of hearing across this entire band. Furthermore, experts agreed (following an ad hoc analysis in the workshop – fully described in Appendix 3 of that report) it was unlikely that seals or bottlenose dolphin would experience more than 6 dB of PTS in the 2-10 kHz frequency band following exposure to low frequency broadband pulsed (LFBP) noise due to low growth rates (under low duty cycle conditions). For porpoises, the worst case was estimated be a 24 dB PTS (and 18 dB was also elicited). Overall, experts provided best estimates of the</p>	<p>(ii) Low vs. high – is there a 'medium' option and would we endorse it?</p>

Ref	Deadline 4 submission	Applicant's response
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effect of PTS on vital rates of typically less than 0.5% reduction – which is significantly smaller than the natural year-to-year variation in vital rates expected to be caused by typical environmental conditions (estimated to be 25-30% (Harwood et al 2014)). Booth & Heinis (2018) also summarised the mechanisms experts considered as to whether PTS could significantly affect vital rates: “In considering how any PTS could affect vital rates (i.e. probability of survival, probability of fertility), experts discussed the mechanisms by which this could occur. In general, experts noted that where communication has a significant social or reproductive function, that this might be a means by which survival and/or reproduction are affected. Experts noted however that PTS would likely occur over a small frequency range and that much of the energy of communication signals either fell

Ref	Deadline 4 submission	Applicant's response
	<p>outside the likely range affected by PTS or that the loss of part of the signal would likely not affect detection of the communication signals." Given the current understanding of how PTS from piling is expected to manifest in the mammalian ear – and the mechanisms that could lead to an effect on vital rates (sensu Booth & Heinis, 2018)- the Applicant considers that it is highly unlikely that vital rates would be altered in a biologically meaningful way as a result of PTS from piling. Therefore, the Applicant maintains the sensitivity of cetaceans to PTS from piling aligns with the definition for Low sensitivity, where vital rates may be affected but not at a biologically significant level.</p>	
<p>2.6.61 Page 107</p>	<p>1.17.2 MMO 5.7.1: The MMO acknowledges that the Applicant is confident with the suitability of their underwater noise assessment, but the MMO still recommends that a conservative</p>	<p>The Applicant has committed to the use of at least one offshore piling noise mitigation technology throughout the piling campaign (commitment C-265) to deliver underwater</p> <p>The MMO acknowledges the Applicant's commitment to the use of at least one offshore piling noise mitigation technology throughout the piling campaign. The final mitigation will need to be</p> <p>As detailed in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), the Applicant has now committed to the use of DBBC throughout the piling campaign. The implementation of this mitigation will further reduce the impact ranges of underwater noise (including behavioural effect ranges) to sensitive features within the vicinity of the Proposed Development in comparison to the previous commitment to use at least one noise abatement system throughout the piling campaign (which assumed, at minimum, 6 dB reduction for all piling works). The Applicant would highlight that this is a substantial additional commitment to mitigation.</p>

Ref	Deadline 4 submission			Applicant's response
2.6.171 Page 125	<p>Under Water Noise 7.1.13 The report attempts to compare different types of noise (i.e., impulsive vs continuous). Throughout the report, the single strike sound exposure level (SELss) is 'converted' to the SPLrms. For example:</p> <ul style="list-style-type: none"> Section 6.2.2: "Noting that these values are SELss, 135 dB is roughly equivalent to 142 dB SPLRMS...." Section 6.2.3: "Therefore 141 dB SELss (approximately equivalent to 148 dB SPLRMS) has been suggested". 	<p><i>Please refer to response in reference 2.6.168.</i></p>	<p>In addition to this response the MMO's scientific advisors Cefas were also in receipt of an Explanatory Note from Subacoustech Ltd on the SEL and rms conversion. It was the intention of the MMO in posing this question to sense-check the various calculations and comparisons used and by extension the plausibility of the overall argument. The Sound Pressure Levels (root mean square) SPLRMS is most commonly encountered in the context of measuring and describing continuous noise (e.g., the noise produced by vessels or indeed the ambient noise) while the noise produced by impulsive sources is typically measured using</p>	<p>Commitment C-265 has been updated accordingly to reflect this proposed mitigation. The updated commitment is as follows: C-265: "Double big bubble curtains will be deployed as the minimum single offshore piling 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:</p> <ul style="list-style-type: none"> sensitive receptors at relevant Marine Conservation Zone (MCZ) sites and reduce the risk of significant residual effects on the designated features of these sites; spawning herring; and marine mammals." <p>The mitigated impact ranges afforded by the implementation of DBBC throughout the piling campaign have been presented relative to key sensitive features within the vicinity of the Proposed Development in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), and the Applicant's Post Hearing Submission – Issue Specific Hearing 1 Appendix 9 – Further Information for Action Points 38 and 39 – Underwater Noise Revision B [REP4-061].</p> <p>Noted, the Applicant has no further comments on this matter.</p>

Ref	Deadline 4 submission	Applicant's response
	<p><i>Analysing piling data directly measured by Subacoustech, a rough conversion of 7 dB was calculated between the two values. Kastelein et al. (2017) estimates a very similar 8 dB conversion in their experiment. Applying the suggested conversion above, 135 dB SELs would be approximately equivalent to 142 dB SPLRMS. This conversion value is relevant to impulsive piling noise and used to estimate an equivalent value that can be compared to the background noise in its own metrics, which is typically defined in terms of SPLRMS. It is not normally appropriate to define continuous background noise in terms of a 'single strike' SEL, although assuming steady state ambient noise, the conversion between SEL and SPLRMS would be approximately equal. Thus, continuous noise of 108 dB SPLRMS is equivalent to 108 dB SEL (over one second), 112 dB SPLRMS is equivalent to 112 dB</i></p>	<p>different metrics (e.g., the energy metric of cumulative SEL or the single pulse SEL, or the peak-pressure metric). The calculations of noise levels in the SPLRMS metric are subject to the specific averaging period, which in the context of continuous noise, is often in the order of several seconds or tens of seconds. As good practice, this time interval (averaging period) used in the calculation of SPL should be stated (Good Practice Guide for Underwater Noise Measurement, 2014). Much shorter averaging time intervals are mathematically possible, and can be encountered in certain contexts, such as estimating the perceived amplitude of a fluctuating signal by the auditory systems of animals. In the present case, the use of pulse length as the averaging time interval is indeed a plausible way of estimating the audibility of piling noise in the context of overall ambient noise. It should be noted, however, that the estimation is subject to several caveats, such as the length of the pulse, the frequency spectrum (which are both changing with the propagation range), while certain factors such as the directionality or other distinctive features of the pulse signals could make them perceptible even if they are below the ambient</p>

Ref	Deadline 4 submission			Applicant's response
2.6.172 Page 125	<p>7.1.14 The report notes that “studies into the impact of impulsive underwater noise generally use a different metric to describe the level noise generated, the SELss...This captures well the energy in an impulsive sound but ideally metrics should be compared like-for-like. To provide a more reliable comparison these will be converted to SPLRMS, roughly equivalent to 7 dB greater than an equivalent SELss based on data previously measured by Subacoustech”. Nevertheless, it is not clear how these empirical conversions are being made, and it would be helpful if further contextual clarity was provided. For example, what assumptions have been made regarding the</p>	<p>Please refer to the Applicant's response in reference 2.6.168. The Applicant welcomes the interest in the intricacies of acoustic calculations. In simple terms, where sounds are shorter than 1 second, the SEL will be lower than the SPLRMS. The duration of the majority of the energy passing in one piling pulse will be much less than 1 second over any distance relevant to this project (sounds tend to ‘spread’ and get longer at great distances). A single pile strike will therefore have a lower SEL than SPLRMS. A continuous sound (e.g. background noise) of 1 second duration will have SPLRMS ≈ SEL. Both</p>	<p>noise levels. Given the non-routine nature of these calculations, the MMO welcome the additional details and clarifications provided.</p> <p>The MMO defer to Natural England for their views on what would lead to a “substantial failure in the ability of seabream to breed”.</p>	<p>As above. The MMO welcome the additional clarification provided by the Applicant / Subacoustech.</p> <p>Noted, the Applicant has no further comments on this matter</p>

Ref	Deadline 4 submission	Applicant's response
	<p>pulse length / number of pulses in 1 minute? (The RMS averaging appears to be done over 1 minute intervals). By definition (see equation shown on page 5, section 3.4), the SEL over 1 second has a value equal to that of the SPLrms. Therefore, if there was one single pulse per second, the SELss and SPLrms would have similar values. Conversely, if SPLrms has higher values than SELss, this implies that there are multiple pulses within 1 second. While this is very plausible in some contexts (e.g., vibropiling noise), it is unlikely to be the case for impact piling.</p>	<p>the SPLRMS and SEL are calculated over the duration of a pulse</p>
2.6.173 Page 125	<p>7.1.15 Furthermore, the MMO would argue that it is not entirely appropriate to apply such conversions to noise thresholds (such as the 135 dB SELss) as this further removes them from their relevant biological context. The best practice for comparing with such thresholds would be to express the generated noise levels (or the measured noise levels, if feasible) in the metric of the thresholds.</p>	<p>The Applicant agrees that every effort should be made to compare any two items in the same metric. As the SELss is intended to describe a 'single strike' or impulse, this is not really suitable for measuring background noise, hence the conversion to SPLRMS. However, as noted in response 2.6.172, the sound exposure level of a continuous noise (e.g. background noise) is</p> <p>As above. The MMO welcome the additional clarification provided by the Applicant / Subacoustech.</p> <p>Noted, the Applicant has no further comments on this matter.</p>

Ref	Deadline 4 submission	Applicant's response		
		<p>approximately equivalent to the SPLRMS. Therefore the 1 second SEL of the underlying background noise (see ref 2.6.168) is approximately 108.4 dB SEL, or approximately 134.3 dB SEL for 1% of the time. However this is not the recommended use of the SEL metric.</p>		
2.6.174 Page 126	<p>7.1.16 The MMO also find the report somewhat misleading in parts. Section 6.2.3 states that “Therefore 141 dB SELs (approximately equivalent to 148 dB SPLRMS) has been suggested. It is slightly above the noise levels that are already present (the baseline monitoring showed that pre-existing noise levels are seen to exceed 140 dB and occasionally reach up to 148 dB)....”. Earlier on, in the Executive Summary, the report also notes that “The 2023 results support the findings of the 2022 survey and demonstrate that noise levels varied generally between 105 dB and 125 dB SPLRMS, although regularly exceeded 135 dB SPLRMS and</p>	<p>The Applicant maintains that the text within the document is an accurate reflection of the range of noise levels recorded during the survey and notes that the text makes no reference to duration, simply noting that the relevant sound levels are exceeded on multiple occasions.</p>	<p>The MMO acknowledges that while the monitoring report may be an accurate reflection of the range of noise levels recorded at the survey, we maintain that the wording ‘regularly exceeded’ is somewhat misleading for the reasons previously explained.</p>	<p>The Applicant notes the concerns and acknowledges that the term “regularly exceeded” does not have a precise meaning. As this statement does not have a material impact on the ultimate conclusions nor the MMO’s perception of the influence of the existing background noise levels on a sensitive receptor’s perception of the piling, no further action is proposed.</p>

Ref	Deadline 4 submission	Applicant's response		
2.6.175 Page 126	<p>exceedance of 140 dB SPLRMS was not unusual". When the MMO look at the figures provided in Appendix A (showing the one-week data summaries), the noise levels only occasionally (and very briefly) exceed 135 dB SPLrms and on some days do not reach this level at all.</p> <p>7.1.17 While these exceedances appear 'regular' when seen over a 6-month interval (Figure 5.1 on page 10 of the report), the situation is very different when comparing to the piling noise and the associated timescales. While the ambient noise may exceed 135 dB SPLrms for a few minutes per day (e.g., roughly 1% of the time, according to Table 6.1), impact piling will be undertaken for (potentially) hours at a time (and noise levels might presumably exceed 135 dB rms for the entire duration of piling).</p>	<p>This is noted by the Applicant, however, as the purpose of this data is primarily to inform the potential for behavioural effects, it is clearly relevant to note that these sound levels are exceeded and so would not be unusual for the black seabream to experience, reducing the likelihood of a consequent behavioural response</p>	<p>As above. Please see response to comment 2.6.174</p>	<p>As Noted, the Applicant has no further comments on this matter.</p>
2.6.176 Page 126	<p>7.1.18 Mitigation is not specifically discussed in detail in the report. Of relevance, section 6.2.2 of the document states that "To minimise adverse impacts from</p>	<p>Noted, the Applicant has no further comments on this matter at this time.</p>	<p>The MMO notes the Applicant's response. The MMO has no further comments to make at this time.</p>	<p>Noted, the Applicant has no further comments on this matter.</p>

Ref	Deadline 4 submission	Applicant's response
2.6.177 Page 126	<p>piling affecting bream in the Kingmere MCZ, noise reduction should be applied that reduces the risk of avoidance behaviour. As stated above, no criteria are available that can characterise this specific scenario, so previous studies carried out for this Project have referred to research based on similar species (sea bass, red seabream) to make a recommendation for a noise limit at the Kingmere MCZ that can be met using commercially available noise abatement systems for piling as Best Practicable Means”</p> <p>7.1.19 We previously advised that the actual (noise) reduction in dB will depend on the site conditions at Rampion 2, and the source spectra. Frequency is an important component to consider. The efficacy of a noise abatement system to reduce the risk of impact depends on the frequency range at which sound energy is reduced and on the target species, as each species is sensitive to a certain frequency range. Fish, for example, are typically</p>	<p>Whilst this point is noted, the Applicant would refer to Bellmann et al (2020) Figure 32, which shows the effectiveness of a bubble curtain to be in excess of 15 dB for all frequencies above the very low 32 Hz band. At the 125 Hz band, where the majority of noise from piling tends to occur, their performance is recorded to be even greater than this.</p> <p>The MMO notes the applicant's response. The purpose of this comment was primarily to make the Applicant aware of the impact of frequency ranges on the efficacy of noise abatement system when considering their final mitigation plans and options. The MMO has no further comments to make at this time.</p>
		<p>The Applicant acknowledges this response and would also reference the reply in 2.12.129. Although assessments on fish must base their calculations on an unweighted performance, especially where the sensitivity of a species in question (black sea bream) is unknown, Ishioka et al, 1988, indicates that the real benefit of a DBBC to a species similar to a black sea bream is likely to be much greater than the indicated 15 dB.</p>

Ref	Deadline 4 submission	Applicant's response
2.6.178 Page 127	<p>more sensitive to sound at low frequencies, where the noise reduction from noise abatement systems tends to be smaller (See MMO S56 Response).</p> <p>7.1.20 The MMO recommended modelling the effect of noise abatement so that the regulator is aware of the risk reduction options available. It should be clear in the assessment which noise abatement measures, or combinations of measures, are being modelled. Ultimately, to determine the efficacy of such systems at Rampion 2, evidence will be required in the form of measurements of piling noise with and without noise abatement. The MMO understands that the Black Sea Bream spawning (nesting) season is March to July. Therefore, the MMO would recommend obtaining measurements of non-abated piling outside of this window.</p>	<p>The Applicant confirms that modelling of the effects of noise abatement measures have been undertaken; the modelling outputs and the potential technologies proposed to achieve these attenuations are provided in the In Principle Sensitive Features Mitigation Plan [APP-239] (updated at Deadline 3).</p> <p>The MMO acknowledges the applicant's comments. Please refer to MMO comments made regarding the applicant's In Principle Sensitive Features Mitigation Plan Rev C (REP3-046) in Section 5 of this response.</p>
2.6.179 Page 127	<p>7.1.21 The report does not present any new information as such relating to the thresholds for black</p>	<p>Please refer to the Applicant's response in reference 2.6.164 above.</p> <p>The MMO note that as requested by the Examining Authority, the Applicant has undertaken noise modelling to demonstrate the effect of</p>
		<p>The Applicant directs the MMO to the Applicant's responses to references 2.12.91 to 2.12.105 above.</p> <p>The Applicant directs the MMO to the Applicant's responses to references 2.12.59 to 2.12.75 where the MMO's feedback on the Appendix H FS: Noise Thresholds for black sea bream of Applicant's Responses to Examining Authority's First Written Questions [REP3-050] is addressed, the Applicant has submitted an updated version of, and explanation of the changes made, in Applicant's Response</p>

Ref	Deadline 4 submission		Applicant's response
	<p>bream. As the report notes, adult European seabass displayed an initial startle response between 141 dB SELss (single strike sound exposure level) and 147.4 dB SELss, which was short-lived (i.e. less than two minutes) at 141 dB SELss. The Applicant maintains that the selection of the lower value of these – 141 dB SELss – is recommended as a reasonable precautionary threshold. The MMO has suggested the use of a lower 135 dB SELss threshold, which was reported as leading to a behavioural reaction in sprat in a quiet inland environment.</p>	<p>a 135 dB SELss threshold. This has been provided in Fish and Shellfish Ecology Appendix H FS: Noise Thresholds for black sea bream of Applicant's Responses to Examining Authority's First Written Questions (REP3-050). Please refer to MMO comments on this submission provided in in Section 5. Regarding the applicant's response as stated at 2.6.164, the MMO do not believe sufficient evidence has been provided to justify why the startle response recorded at 131dB for the smaller fish in the Kastelein paper should be ignored. To reiterate, the MMO has previously highlighted that in the study by Kastelein et al. (2017), a 50% initial response threshold occurred at an SELss of 131 dB re 1 mPa² s for 31 cm fish and 141 dB re 1 mPa² s for 44 cm fish; thus, the small fish reacted to lower SELss than the large fish. Black sea bream attain reproductive maturity at 30cm, so noting that the smaller seabass of 31cm showed initial responses at a threshold of SELss of 131 dB re 1 mPa² s it can be argued that this threshold is more suitable.</p>	<p>to ExAs First Written Questions - Fish and Shellfish - Appendix H (Document Reference 8.54.1) at Deadline 5.</p> <p>The Applicant directs the MMO to the Applicant's response to ref 2.12.62 above where the Applicant has provided sufficient evidence to justify why the startle response recorded at 131dB for the smaller fish in the Kastelein et al (2017) paper is not appropriate for the assessment of behavioural impacts of black seabream.</p>
2.6.180 Page 127	7.1.22 The MMO note that the Applicant is of the opinion that the 135 dB SELss threshold is not only relevant to a	The Applicant directs the MMO to the response in reference 2.6.164 above, which details the Applicant's	Please see response to comment 2.6.41 above. The MMO consider that this issue is still unresolved and maintain that a behavioural The Applicant acknowledges the MMO's position regarding the disturbance thresholds and reiterates that the Applicant does not support the use of the 135 dB threshold to inform the piling zoning mitigation measures, for the reasons detailed in reference 2.12.62 above.

Ref	Deadline 4 submission	Applicant's response
	<p>much more sensitive species and derived from a different environment, it is also expected to be difficult to achieve across the Rampion 2 Order Limits, practically, even with two methods of direct noise mitigation (such as a double bubble curtain and attenuated hammer). Therefore 141 dB SELss has been suggested. However, the MMO maintain that the threshold of 135 dB SELss, as per Hawkins et al., (2014), should be used as a precautionary approach to modelling.</p>	<p>reasoning for not using the 135dB SELss threshold to inform the impact assessment. To summarise, the 135dB SELss threshold is not considered relevant and is not supported in the literature for use in impact assessments and, nor are the results of the study applicable to a more industrialised part of the sea with much higher background noise levels.</p> <p>noise threshold of 135dB is more appropriate. However, the MMO restates that an appropriate threshold needs to be agreed between all parties</p>
5.13 Outline Scour Protection and Cable Protection Plan Rev B (REP3-039)		
2.12.133	<p>5.13.1 The MMO notes the Applicant has added the following proposed mitigation measures to this document.</p> <p>I. C-283 - Gravel bags laid on the seabed to protect the cable barge during construction of Rampion 2, will be removed prior to the completion of construction, where practicable.</p> <p>II. C-288 - The Applicant is committed to minimising the release of plastics into the marine environment, and commits to using suitable alternatives, where this is practicable.</p> <p>III. C-289 - The Applicant will use secondary protection material, where practicable, that has the greatest potential for removal on decommissioning of the Proposed Development.</p> <p>IV. C-297 The location of gravel beds will be microsited to avoid sensitive features, where practicable.</p>	Noted, the Applicant has no further comments on this matter.
2.12.134	5.13.2 Please refer to benthic comments made in relation to the In Principle Sensitive Features Mitigation Plan provided earlier in this section for comment on these proposals.	The Applicant has responded to these comments in the In Principle Sensitive Features Mitigation Plan section of this document.
5.14 Outline Marine Written Scheme of Investigation Rev B (REP3-041)		
2.12.135	5.14.1 The MMO understands that as stated in Paragraph 5.3.2 of our Deadline 2 submission (REP2-035) that Historic England (HE) have previously raised specific areas of concern over the evaluations and provisions as presented in the Marine Written Scheme of Investigation (WSI).	Noted, the Applicant has no further comments on this matter.

Ref	Deadline 4 submission	Applicant's response
2.12.136	5.14.2 The MMO defer to the opinion of HE on whether this updated version of the WSI has suitably addressed those concerns and will maintain a watching brief on whether HE concerns are resolved.	Noted, the Applicant has no further comments on this matter.
2.12.137	5.14.3 The MMO acknowledges HE previous request for provisions within the Schedule of Requirements to secure avoidance and/or mitigation of harm by requiring the approval of Relevant authorities. The MMO will keep a watching brief on further documents provided by HE to the Applicant.	Noted, the Applicant has no further comments on this matter.
5.15 Applicant's Responses to Historic England Deadline 1 Submission on Marine Archaeology Rev A (REP3-056)		
2.12.138	5.15.1 This document contains the Applicant's response to Historic England's Written Representations submitted at Deadline 1 (REP1-055). The MMO notes that in the Applicant's response to WR comment 5.7 it is stated that under condition 11(3) of the Draft Development Consent Order that pre-commencement archaeological investigations and pre-commencement material operations must only take place in accordance with a specific WSI which has been submitted to and approved by the MMO.	Noted, the Applicant has no further comments on this matter.
2.12.139	5.15.2 This WSI must be in accordance with the details set out in the Outline Marine Scheme of Investigation. As stated above the MMO is aware of concerns raised by HE concerning the suitability of the Applicant's previously submitted WSI and defer to the advice of HE on the suitability of the WSI and if the issues raised previously have been satisfactorily addressed.	Noted, the Applicant directs the MMO to their responses in Applicant's Response to Deadline 4 Submission – Historic England (Document Reference: 8.84) .
2.12.140	5.15.3 The MMO notes that in WR comment 11.9 that HE has raised concerns that detailed advice provided in relation to the Applicant's Outline Marine WSI during preapplication has not been acted upon. The MMO notes that the Applicant has responded to these concerns by stating that these issues were discussed thoroughly at the Expert Topic Group dated 16/06/2022 and feature on page 649 of the Evidence Plan (Part 1 of 11) (APP-243). The MMO once again defers to the advice of HE on whether this response adequately addresses previous concerns and on the overall suitability of the current WSI.	Noted, the Applicant directs the MMO to their responses in Applicant's Response to Deadline 4 Submission – Historic England (Document Reference: 8.84) .
2.12.141	5.15.4 The MMO notes that in WR comment 11.26 that HE do not agree with the Applicant's approach to pre-commencement surveys as set out in Paragraph 9.1.5 of the Outline Marine WSI. It is the belief of HE that an approved WSI should be used to inform precommencement surveys as opposed to the Applicant's current proposal that the draft WSI will be updated prior to pre-commencement surveys.	Noted, the Applicant directs the MMO to their responses in Applicant's Response to Deadline 4 Submission – Historic England (Document Reference: 8.84) .
2.12.142	5.15.5 The MMO notes the Applicant's acknowledgement of these comments and their response which states that Paragraph 9.1.5 is in accordance with guidance as set out by the Crown Estate in regards to Archaeological WSI for Offshore Wind Farm Projects and is consistent with the approach of recently consented OWF such as Hornsea 4 and East Anglia Two.	Noted, the Applicant has no further comments on this matter.
2.12.143	5.15.6 The MMO notes that specific survey details will be outlined in specific methods statements as stated in the Outline Marine WSI. The MMO defers to HE advice on the suitability of the methods presented in the updated Outline Marine WSI submitted at Deadline 3 (REP3-041).	Noted, the Applicant directs the MMO to their responses in Applicant's Response to Deadline 4 Submission – Historic England (Document Reference: 8.84) .
5.16 EN010117-001173-Written Questions FINAL		

Ref	Deadline 4 submission	Applicant's response
2.12.144	5.16.1 In response to The Examining Authority's Written Questions, question FS 1.20 directed towards the MMO remained outstanding from out Deadline 3 response.	Noted, the Applicant has no further comments on this matter.
2.12.145	5.16.2 In question FS 1.20 it is stated that the Applicant has submitted further information on sandeel habitat which it says is undertaken following the MarineSpace (2013a) methodology. This new data is said to be contained with the Applicant's deadline 1 submission Further information for Action Points 38 and 39 – Underwater Noise (REP1- 020).	The Applicant directs the MMO to the sandeel heatmap presented in 8.25.1 Applicant's Post Hearing Submission – Issue Specific Hearing 1 Appendix 9 - Further information for Action Points 38 and 39 – Underwater Noise [REP4-061] , which was submitted into Examination at Deadline 1, and subsequently revised at Deadline 4, following receipt of feedback from Cefas and the MMO at Deadline 3.
2.12.146	5.16.3 In Figure 3-2 (REP1-020) displaying Sandeel Spawning Habitat Suitability Assessment, the Applicant's 'heat' scale ranges from 0 – 9 which is inconsistent with the 'heat' scale defined by the MarineSpace (2013) methodology, which ranges from 0 – 16. Whilst some layers may not occur in all regions, for example the Eastern Sea Fisheries Joint Committee (ESFJC) Fishing Grounds layer, they must not be omitted as the categorisation of 'heat' associated with mapping according to MarineSpace (2013) explicitly categorises 'heat' scores into four discrete intervals: 1-4 (low), 5-8 (medium), 9-12 (high), 13-16 (very high).	The Applicant directs the MMO to the Applicant's response to reference 2.12.145 .
2.12.147	5.16.4 The MMO directs the Applicant to Paragraphs 4.5.4 & 4.5.5 of our Deadline 3 response (REP3-076) for comments relating to the use of MarineSpace (2013) methodologies which are also applicable here. The MMO does not consider that the Applicant has presented information on sandeel habitat which conform to methodologies as defined MarineSpace (2023).	The Applicant directs the MMO to the Applicant's response to reference 2.12.145 .
5.17 Applicant's Response to Prescribed Consultees' Written Representation (REP2- 026)		
2.12.148	5.17.1The MMO has consulted with our scientific advisors Cefas and concluded that as this document relates largely to comments raised by NE and other agencies that the MMO has no further comments to make at this time. The MMO defer to the advice of Natural England as to whether the issues raised previously have been satisfactory addressed by this document.	Noted, the Applicant has no further comments on this matter.
2.12.149	5.17.2The MMO may provide further comments on this document in the future.	Noted, the Applicant has no further comments on this matter.

Table 2-13 Applicant's comments to Southern Water Services' Deadline 4 submissions

Ref	Deadline 4 submission	Applicant's comments
2.13.1	<p>We write further to the Issue Specific Hearing on 15 May 2024, and in particular regarding Question TE.1.8</p> <p>We understand that the Applicant is not proposing to pursue trenchless crossing methods in the Olivers Copse area. Further to our submission dated 25 April 2024 (enclosed) and the Examiner's questions to the Applicant at the Issue Specific Hearing 2 on 15 May 2024, we have been asked to provide further comment on this point, and we can confirm that we would find trenchless excavation in the Olivers Copse area problematic due to the hydrogeological sensitivity of the area and proximity to our groundwater abstraction. An HDD crossing method has greater risk than an open cut method at this particular location and therefore our preference would be for an open cut method to be adopted.</p> <p>Please find set out below Southern Water Services Ltd's (SWS) response to the Examiner's First Written Questions.</p> <p>Question TE.1.8 In response to a concern raised by West Sussex CC in its LIR [REP1-054], the Applicant has confirmed that open cut trenching method is proposed through tree group G887 which West Sussex CC state would temporarily sever connections from the adjacent ancient woodland site, Olivers Copse, from the nearby woodland, Kitpease Copse. West Sussex CC further state that using a trenchless crossing in this area would significantly reduce impacts on the tree group, and consequently reducing negative impacts on landscape character and the visual amenity of users of the PRoW. The Applicant responded in [REP2-020] to say an open cut trenching method in this location has been specified as it lies within a Source Protection Zone (SPZ) for potable groundwater.</p> <ul style="list-style-type: none"> a) Confirm which category of SPZ this location falls within, SPZ1 or another? b) Comment on the risk, if any, HDD could have to the public water supply at this location <p>SWS's Response WSCC are suggesting that the Applicant uses a no dig methodology to avoid removing some woodland, which would be through our SPZ2, not far to the east of our SPZ1 between Kitpease Copse and Olivers Copse. The geospatial route of the proposed trenchless digging location is presently unknown. The British Geological Society maps show the site to be located on the Spetisbury Chalk Member. SWS's Littlehampton abstraction is located approximately 250m from the proposed location and it abstracts groundwater from the unconfined Chalk, via enhanced fissure development associated with the overlying Palaeogene deposits of the Chichester Syncline. This area of the Chalk has also been mapped as having a high frequency of karstic features which further increases the groundwater vulnerability. The proposed trenchless digging location is hydrogeologically very sensitive and there could be severe adverse impacts to our groundwater abstraction should the proposed construction methodology not include the correct mitigation to eliminate or reduce impacts to our public groundwater supply.</p> <p>SWS request a Hydrogeological Risk Assessment (HRA) of the proposed trenchless placement methodology be completed. This would detail:</p>	<p>The Applicant acknowledges that Southern Water has provided their previous response to the Examining Authority's First Written Questions for context (TE 1.8), which has been replaced by their point of clarification (which is provided upfront in the first paragraph). This point of clarification is consistent with the pre-application advice given by Southern Water and the Environment Agency (that the trenchless crossing option is riskier and clearly more problematic) and presents the conclusion of the discussion held with both parties on 09 May 2024. As communicated by the Applicant at the Issue Specific Hearing 2 (May 2024), this advice was taken into account as part of the design of the Proposed Development, whereby the mitigation hierarchy has been appropriately followed in relation to both the water environment and biodiversity constraints at that location. A proportionate, and balanced approach has been taken to avoid potential disruption and impacts upon a regionally important water supply. Therefore the selection of an open cut trenching methodology rather than a trenchless crossing at the Kitpease Copse area has been incorporated into the Proposed Development (as part of mitigation) due to the hydrogeological sensitivity of the area and proximity to our groundwater abstraction.</p>

Ref	Deadline 4 submission	Applicant's comments
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- the proposed depth of placement and its relationship with groundwater; • methods to prevent lateral and vertical connectivity losses;
- materials to be used and demonstration that these would not cause unacceptable groundwater pollution;
- consideration of turbidity risk, both from fine particulate muds (bentonite) if any and potential mobilisation of natural materials;
- the proposed construction timeframe to ensure construction during high groundwater levels is avoided.

Once the assessment is finalised, SWS will require review and approval of the document to confirm it's suitability. The trenchless methodology statement will need to be included in or appended to this assessment. The Environment Agency will also require review and approval of the HRA.

Prior to development, a Construction Environmental Management Plan (CEMP) would be required to be agreed to detail communications and actions between the developers and our sites to minimise any potential for impacts. Southern Water will require review and approval of this document.

For the broader environment, the main risks and concerns arising from HDD (if this method of trenchless excavation is selected) are as follows:

- launch and reception areas direct physical impact. This is mitigated by careful location selection – we recently completed the water main installation to Isle of Sheppey with launch and reception locations within an SSSI as it was unavoidable but identifying an appropriate location and close liaison with Natural England and the EA made it possible. In this case, the launch and reception could be in arable fields which tend to be of low environmental importance;
- chemical additives to drilling muds and their potential effects – often avoided by using non-petrochemical materials;
- drilling mud 'breakout' which can physically smother an area. This tends to be of an increased concern when crossing watercourses. Identifying and using a sufficient depth of drill and careful monitoring can provide mitigation for this.

SWS is aware that HDD techniques are used to mitigate sensitive area crossings. HDD proposals need to be based on a case by case assessment of the detail of the proposals and/or specific method statements. In this specific case, ignoring the SPZ water supply issue, some drilling mud in the ground would not be an environmental or ecological issue. Breakout to surface could however effect protected species if any are present in the woodland but we note that the Development proposes a reduced impact to a 40m wide area felled and soil stripped, and four sets of 1m wide trenches dug across it. The open cut through the area would reduce connectivity of habitats and loss of the area of woodland habitat.

SWS is still considering any impacts of the Applicant's proposed open cut method on its network and what provisions or mechanisms are needed to ensure it is not adversely impacted in any way by the project. Please note that our response above as regards our concerns with the HDD proposals, should not be interpreted as SWS being in support of the

Ref	Deadline 4 submission	Applicant's comments
	open cut methodology as proposed by the Applicant, as we are considering these impacts as well.	

Table 2-14 Applicant's comments to Natural England's Deadline 4 submissions – Cover letter

Ref	Deadline 4 submission	Applicant's comments
2.14.1	<p>Natural England has reviewed the relevant documents submitted by the Applicant at Deadline 4. Please find an update of Natural England's position regarding these documents in Table 1 below, including anticipated timing of responses. In addition, Natural England is also submitting the following detailed responses, signposted from Table 1, within the following thematic appendices:</p> <ul style="list-style-type: none"> • EN010117 467675 - Appendix B4 - Natural England's Advice on the Kittiwake Implementation and Monitoring Plan, and Guillemot and Razorbill Evidence and Roadmap • EN010117 467675 - Appendix E4 - Natural England's Advice on Fish and Shellfish • EN010117 467675 - Appendix J4a - Natural England's Advice on Terrestrial Ecology • EN010117 467675 - Appendix J4b - Natural England's Advice on Biodiversity Net Gain • EN010117 467675 - Appendix J4c - Natural England's Advice on Soils • EN010117 467675 – Appendix N4 – Natural England's response to The Examining Authority's request for further information from Natural England arising out of Issue Specific Hearing 2 	Noted, the Applicant has no further comment on this matter at this time.
2.14.2	<p>2. Commitments Register</p> <p>We note that the Applicant's Response to the Examining Authority's First Written Questions [REP3-086], Question DCO 1.31, states that 'It is not intended that the Commitments Register [REP1-015]) is secured as certified through Schedule 16'. However, we note that the commitments register has been added to the 'Schedule 16 (Part 2) - other documents to be certified' section of the Development Consent Order (revision D) [REP3-004]. We understand from recent discussions with the Applicant that it is their intention to include the commitments register as a certified document, and to submit a further updated commitments register at Deadline 4. In light of this now becoming a certified document, Natural England will conduct a full review of the commitments register to date and provide our advice on this at Deadline 5.</p>	<p>The Applicant submitted an updated Commitments Register [REP4-057] at Deadline 4 and awaits Natural England's response at Deadline 5.</p> <p>The Applicant welcomes this response from Natural England. The Applicant will be providing updated Environmental Statement chapters and control documents at Deadline 6 where required, as per the Issue Specific Hearing 2 Action Point 32 [EV5-018]. These updates will capture the amendments that have been made throughout the Examination ensuring commitments and securing mechanisms are appropriate for the post-consent phase.</p>
2.14.3	<p>3. Applicant's Deadline 4 submissions</p> <p>Natural England notes that the Applicant intends on resubmitting updates to some of the documents we have reviewed at Deadline 3, as part of their Deadline 4 submission. Therefore, Natural England may have further advice to provide on these documents when we have reviewed the additional updates.</p>	Noted, the Applicant has no further comment on this matter at this time.
2.14.4	<p>4. Deadlines 5 and 6</p> <p>Natural England understands that the Applicant will be submitting several documents relevant to our key concerns at Deadline 4. On 18th June 2024 the ExA will be releasing the Report on the Implications European Sites (RIES), potentially a further set of ExA questions and schedule of proposed DCO changes. We will also be working with the Applicant on the completed Statement of Common Ground (SOCG) during this time.</p> <p>Given the arrival of substantive additional material in the latter stages of the Examination at a time when core Examination documents such as the RIES and SOCG are to be prioritised, Natural England highlights that we will be carefully assessing which Deadline 4 submissions we can respond to at Deadline 5, and which responses will have to be provided at Deadline</p>	

Ref	Deadline 4 submission			Applicant's comments
6.				
2.14.5	PINS Document Reference	Applicant's Document Name	Natural England's Response/Position Summary	Applicant's comments
	REP3-001	Deadline 3 Covering Letter	Natural England has no comments on this submission at this time.	Noted, the Applicant has no further comment on this matter at this time.
	REP3-002		Natural England has no comments on this submission at this time.	Noted, the Applicant has no further comment on this matter at this time.
	REP3-049/050	7.22 Commitments Register Rev C (clean & tracked)	Please see point 2 above.	Please see the Applicant's response in reference 2.14.2 above.
	REP3-051	8.54 Applicant's Response to Examining Authority's First Written Questions Rev A	As previously advised, we do not intend on commenting on any direct responses by the Applicant. Natural England has highlighted some key points within our risk and issues log and thematic appendices where relevant.	Noted, the Applicant has provided a response to Natural England's thematic appendices in Table 2-15 to Table 2-20 below.
	REP3-052	8.55 Applicant's Response to Deadline 2 Submissions Rev A	As previously advised, we do not intend on commenting on any direct responses by the Applicant. Natural England has highlighted some key points within our risk and issues log and thematic appendices where relevant.	Noted, the Applicant has provided a response to Natural England's thematic appendices in Table 2-15 to Table 2-20 below.
	REP3-066	8.56 Draft Heads of Terms for S106 Agreement with West Sussex County Council Rev A	Natural England has no comments on this submission at this time.	Noted, the Applicant has no further comment on this matter at this time.
	REP3-064	8.57 Draft Heads of Terms for S106	Natural England has no comments on this submission at this time.	Noted, the Applicant has no further comment on this matter at this time.

Ref	Deadline 4 submission		Applicant's comments
REP3-065	Agreement with Horsham District Council Rev A 8.58 Draft Heads of Terms of S106 Agreement with South Downs National Park Authority Rev A	Natural England has no comments on this submission at this time.	Noted, the Applicant has no further comment on this matter at this time.
REP3-057	8.63 Applicant's Responses to Historic England Deadline 1 Submission on Marine Archaeology Rev A	Natural England has no comments on this submission at this time as this falls outside of our remit.	Noted, the Applicant has no further comment on this matter at this time.
REP3-008 - 011	Land Rights Tracker	Natural England has no comments on this submission at this time as this falls outside of our remit.	Noted, the Applicant has no further comment on this matter at this time.
REP3-012	Change Log Book of Reference	Natural England has no comments on this submission at this time as this falls outside of our remit.	Noted, the Applicant has no further comment on this matter at this time.
REP3-003/004	3.1 Draft Development Consent Order Rev D (clean & tracked)	Natural England's response is provided as an update to our risks and issues log.	Noted, the Applicant has no further comment on this matter at this time.
REP3-005/006	3.2 Explanatory Memorandum Rev C (clean & tracked)	Natural England's response is provided as an update to our risks and issues log.	Noted, the Applicant has no further comment on this matter at this time.

Ref	Deadline 4 submission		Applicant's comments
REP3-007	3.3 Schedule of Changes to the Draft Development Consent Order Rev C	Natural England's response is provided as an update to our risks and issues log.	Noted, the Applicant has no further comment on this matter at this time.
REP3-015/016	6.2.16 ES Volume 2 Chapter 16 Marine Archaeology Rev B (clean & tracked)	Natural England has no comments on this submission at this time as this falls outside of our remit.	Noted, the Applicant has no further comment on this matter at this time.
REP3-017/018	6.4.16.1 ES Volume 4 Appendix 16.1 Marine Archaeology Technical Report Rev B (clean & tracked)	Natural England has no comments on this submission at this time as this falls outside of our remit.	Noted, the Applicant has no further comment on this matter at this time.
REP3-039/040	7.12 Outline Scour Protection and Cable Protection Plan Rev B (clean & tracked)	Natural England's response is provided as an update to our risks and issues log.	Noted, the Applicant has no further comment on this matter at this time.
REP3-041/042	7.13 Outline Marine Written Scheme of Investigation Rev B (tracked & tracked)	Natural England has no comments on this submission at this time as this falls outside of our remit.	Noted, the Applicant has no further comment on this matter at this time.
REP3-043/044	7.16 Outline Offshore Operations and Maintenance Plan Rev B	Natural England's response is provided as an update to our risks and issues log.	Noted, the Applicant has no further comment on this matter at this time.

Ref	Deadline 4 submission		Applicant's comments
REP3-045/046	(clean & tracked) 7.17 In Principle Sensitive Features Mitigation Plan Rev C (clean & tracked)	Natural England's response is provided as an update to our risks and issues log.	Noted, the Applicant has no further comment on this matter at this time.
REP3-047/048	7.18 In Principle Offshore Monitoring Plan Rev B (clean & tracked)	Natural England's response is provided as an update to our risks and issues log.	Noted, the Applicant has no further comment on this matter at this time.
REP3-058/059	8.64 Kittiwake Implementation and Monitoring Plan Rev A (clean & tracked)	Natural England's response to this document in is provided in Appendix B4.	The Applicant has provided a response to Deadline 4 Submission – Appendix B4 – Natural England's advice on Kittiwake Implementation and Monitoring Plan, and Guillemot and Razorbill Evidence and Roadmap [REP4-091] , please see Table 2-15 .
REP3-060	8.65 Guillemot and Razorbill Evidence and Roadmap Rev A	Natural England's response to this document in is provided in Appendix B4.	The Applicant has provided a response to Deadline 4 Submission – Appendix B4 – Natural England's advice on Kittiwake Implementation and Monitoring Plan, and Guillemot and Razorbill Evidence and Roadmap [REP4-091] , please see Table 2-15 .
REP3-013/014	5.8 Design and Access Statement Rev B (clean & tracked)	Natural England's response to this document in is provided in Appendix J4a.	The Applicant has provided a response to Deadline 4 Submission – Appendix J4A – Natural England's advice on Terrestrial Ecology [REP4-093] , please see Table 2-17 .
REP3-019/020	6.4.22.15 ES Volume 4 Appendix 22.15 Biodiversity net gain information Rev B	Natural England's response to this document in is provided in Appendix J4b.	The Applicant has provided a response to Deadline 4 Submission – Appendix J4B – Natural England's advice on Biodiversity Net Gain [REP4-094] , please see Table 2-18 .

Ref	Deadline 4 submission	Applicant's comments
REP3-021/022	(clean & tracked) 6.4.23.2 ES Volume 4 Appendix 23.2 Traffic Generation Technical Note Rev C (clean & tracked)	Natural England has no comments on this submission at this time Noted, the Applicant has no further comment on this matter at this time.
REP3-023/024	7.1 Outline Operational Drainage Plan Rev B (clean & tracked)	Natural England has no comments on this submission at this time. Noted, the Applicant has no further comment on this matter at this time.
REP3-025/026	7.2 Outline Code of Construction Practice Rev C (clean & tracked)	Natural England's response to this document is provided in Appendix J4a (terrestrial ecology), and Appendix J4c (soils). The Applicant has provided a response to Deadline 4 Submission – Appendix J4A – Natural England's advice on Terrestrial Ecology [REP4-093] and Deadline 4 Submission – Appendix J4C – Natural England's advice on Soils [REP4-095], please see Table 2-19 .
REP3-027/028	7.4 Outline Soil Management Plan Rev B (clean & tracked)	Natural England's response to this document in is provided in Appendix J4c. The Applicant has provided a response to Deadline 4 Submission – Appendix J4C – Natural England's advice on Soils [REP4-095], please see Table 2-20 .
REP3-029/030	7.6 Outline Construction Traffic Management Plan Rev D (clean & tracked)	Natural England has no comments on this submission at this time Noted, the Applicant has no further comment on this matter at this time.
REP3-031/032	7.7 Outline Construction Workforce Travel Plan Rev B (clean & tracked)	Natural England has no comments on this submission at this time Noted, the Applicant has no further comment on this matter at this time.

Ref	Deadline 4 submission		Applicant's comments
REP3-033/034	7.8 Outline Public Rights of Way Management Plan Rev B (clean & tracked)	Natural England has no comments on this submission at this time	Noted, the Applicant has no further comment on this matter at this time.
REP3-035/036	7.9 Outline Onshore Written Scheme of Investigation Rev B (clean & tracked)	Natural England has no comments on this submission at this time	Noted, the Applicant has no further comment on this matter at this time.
REP3-037/038	7.10 Outline Landscape and Ecology Management Plan Rev B (clean & tracked)	Natural England's response to this document in is provided in Appendix J4a (terrestrial ecology). Natural England has no comments on this submission at this time, but we will review the updated version due to be submitted by the Applicant at deadline 4.	The Applicant has provided a response to Deadline 4 Submission – Appendix J4A – Natural England's advice on Terrestrial Ecology [REP4-093] , please see Table 2-17 .
REP3-053	8.59 Air Quality Mitigation Strategy Rev A	Natural England has no comments on this submission at this time	Noted, the Applicant has no further comment on this matter at this time.
REP3-054	8.60 Outline Noise and Vibration Management Plan Rev A	Natural England has no comments on this submission at this time	Noted, the Applicant has no further comment on this matter at this time.
REP3-055	8.61 Construction Access Update Assessment Summary Rev A	Natural England has no comments on this submission at this time	Noted, the Applicant has no further comment on this matter at this time.
REP3-056	8.62 Outline Air Quality Management Plan Rev A	Natural England has no comments on this submission at this time	Noted, the Applicant has no further comment on this matter at this time.

Table 2-15 Applicant’s comments to Natural England’s Deadline 4 submissions – Appendix B4 Kittiwake and Guillemot

Ref	Deadline 4 submission	Applicant’s comments																		
2.15.1	<p>1. Summary [REP3-059] 8.64 Kittiwake Implementation and Monitoring Plan (tracked changes)</p> <p>Following Natural England’s comments on the previous iteration of the Kittiwake Implementation and Monitoring Plan (KIMP), the Applicant has now included consideration of the 95% upper confidence interval (UCI) impact value in the document, which is welcomed. We advise that it is important to consider this value as part of an appropriately precautionary approach given the multiple layers of uncertainty that exist within the assessment process and confidence in compensatory measures. We note that the Applicant has also now stated that the Offshore Ornithology Engagement Group is likely to comprise multiple developers as well as key stakeholders. We emphasise that this group will be essential for effective coordination of agreed protocols and strategic monitoring.</p>	<p>See response in Point 1 of Table 1 below on the Applicant’s position regarding the inappropriateness of using the upper 95% confidence interval within compensation calculations.</p> <p>It should also be noted that the Deadline 3 Submission – 8.64 Kittiwake Implementation and Monitoring Plan [REP3-058] (updated at Deadline 5) has been provided on a without prejudice basis given an impact of less than 1 bird to the Flamborough and Filey Coast (FFC) Special Protection Area (SPA).</p>																		
2.15.2	<p>[REP3-060] 8.65 Guillemot and Razorbill Evidence and Roadmap</p> <p>Natural England are broadly supportive of the measures proposed in this document to provide compensation for impacts on guillemot and razorbill through reduction of disturbance at small colonies in the South-west. Although disturbance certainly represents a general threat to guillemot and razorbill breeding success, the nature and severity of any impact is likely to vary significantly between individual colonies. We advise that it will require significant amounts of on-site monitoring and engagement with local experts to establish a baseline for the current level of disturbance and its impact on colony productivity at any given site, and to establish what measures might effectively mitigate any disturbance occurring.</p>	<p>The Applicant welcomes Natural England’s support for this measure. Monitoring and site-investigations during the 2024 breeding season will provide further insight into which disturbance reduction measures will be most appropriate at each of the short-listed sites.</p> <p>The Applicant is in discussion with other developers in an attempt to progress this measure collaboratively.</p> <p>It should also be noted that the derogation case for guillemot and razorbill has been provided on a without prejudice basis given the precaution within the assessment and the very low contribution the Flamborough and Filey Coast (FFC) Special Protection Area (SPA).</p>																		
2.15.3	<table border="1"> <thead> <tr> <th rowspan="2">Point Number</th> <th colspan="3">Location within Submitted Document</th> <th>Natural England Response</th> <th rowspan="2">Natural England’s Advice to resolve the Issue</th> <th rowspan="2">Applicant’s comments</th> </tr> <tr> <th>Section</th> <th>Page</th> <th>Paragraph, Table or Figure Number</th> <th>Key Concern</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>4</td> <td>6</td> <td>4.1.2</td> <td> <p>Natural England highlights that assessment of collision risk currently relies on limited empirical evidence and contains multiple sources of uncertainty and variability. We advise that Natural England’s current recommended parameters represent a reasonable level of precaution in the absence of more reliable data.</p> <p>The request to consider the 95% upper Confidence Interval (UCI) is reflective of the importance of taking into account the multiple sources of variation and</p> </td> <td> <p>We continue to advise that the 95% confidence level is considered.</p> </td> <td> <p>The Applicant regards uncertainty around the likely impact to be adequately covered through the precaution in the approach to apportioning (for example, apportioning of adults) and the assessment methodology (for example, the avoidance rates, flight heights, flight speeds and levels of nocturnal activity used in Collision Risk Modelling (CRM)). In addition, given that the site has no breeding season connectivity there is minimal functional connectivity to FFC SPA.</p> <p>Uncertainty regarding the efficiency with which compensation will be delivered is captured through the application of compensation ratios to provide nesting space beyond the calculated requirement. The Applicant is</p> </td> </tr> </tbody> </table>	Point Number	Location within Submitted Document			Natural England Response	Natural England’s Advice to resolve the Issue	Applicant’s comments	Section	Page	Paragraph, Table or Figure Number	Key Concern	1	4	6	4.1.2	<p>Natural England highlights that assessment of collision risk currently relies on limited empirical evidence and contains multiple sources of uncertainty and variability. We advise that Natural England’s current recommended parameters represent a reasonable level of precaution in the absence of more reliable data.</p> <p>The request to consider the 95% upper Confidence Interval (UCI) is reflective of the importance of taking into account the multiple sources of variation and</p>	<p>We continue to advise that the 95% confidence level is considered.</p>	<p>The Applicant regards uncertainty around the likely impact to be adequately covered through the precaution in the approach to apportioning (for example, apportioning of adults) and the assessment methodology (for example, the avoidance rates, flight heights, flight speeds and levels of nocturnal activity used in Collision Risk Modelling (CRM)). In addition, given that the site has no breeding season connectivity there is minimal functional connectivity to FFC SPA.</p> <p>Uncertainty regarding the efficiency with which compensation will be delivered is captured through the application of compensation ratios to provide nesting space beyond the calculated requirement. The Applicant is</p>	
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1	4	6	4.1.2	<p>Natural England highlights that assessment of collision risk currently relies on limited empirical evidence and contains multiple sources of uncertainty and variability. We advise that Natural England’s current recommended parameters represent a reasonable level of precaution in the absence of more reliable data.</p> <p>The request to consider the 95% upper Confidence Interval (UCI) is reflective of the importance of taking into account the multiple sources of variation and</p>	<p>We continue to advise that the 95% confidence level is considered.</p>	<p>The Applicant regards uncertainty around the likely impact to be adequately covered through the precaution in the approach to apportioning (for example, apportioning of adults) and the assessment methodology (for example, the avoidance rates, flight heights, flight speeds and levels of nocturnal activity used in Collision Risk Modelling (CRM)). In addition, given that the site has no breeding season connectivity there is minimal functional connectivity to FFC SPA.</p> <p>Uncertainty regarding the efficiency with which compensation will be delivered is captured through the application of compensation ratios to provide nesting space beyond the calculated requirement. The Applicant is</p>														

Ref	Deadline 4 submission			Applicant's comments	
				<p>uncertainty, and presenting results in a way that does not assign false levels of confidence to predicted impacts. This applies to an even greater extent when considering compensation, which itself introduces new sources of uncertainty around the true effectiveness of measures.</p> <p>Consideration of the 95% Upper Confidence Interval seems particularly reasonable in the case of Rampion 2's impacts on kittiwake at Flamborough and Filey Coast Special Protection Area (SPA), as this would only involve compensating for a single additional potential kittiwake mortality.</p>	<p>confident that the measure will be delivered and considers a ratio of 2:1 to be appropriate. However, as stated below, a 4:1 ratio can be provided.</p> <p>The Applicant is confident that compensation can be delivered, if required, at an existing Artificial Nesting Structure (ANS) that is already constructed and hosting breeding kittiwake. As such, the Applicant considers concerns regarding the likelihood of implementation and rates of colonisation are unfounded. The Gateshead kittiwake tower is designed to support >200 kittiwake nests, with the ability to expand the design to support further nesting spaces if required. The Applicant notes that the Marine Recovery Fund may offer an alternative to the Applicant delivering compensation.</p> <p>Based on the Central Impact Value (CIV) the project will be required to deliver 7 additional breeding pairs at this structure (Hornsea 3 stage 1 calculation, at a ratio of 3:1), therefore the Applicant considers that the uncertainties over the delivery of the required compensation are unfounded and the use of the 95% UCI to be an unnecessary additional layer of precaution in this case.</p> <p>In addition, breeding kittiwakes are likely to experience a further productivity gain from the structures design compared with birds within the wider population, which is not considered within these calculations.</p> <p>The Applicant has provided an updated Kittiwake Implementation and Monitoring Plan [REP3-058] at Deadline 5.</p>
2	7	18	7.1.2	<p>We note that the Applicant has now stated that the Offshore Ornithology Engagement Group (OOEG) is likely to comprise multiple developers as well as key stakeholders. We note that this is in line with our suggestion that a single OOEG covering all projects dependent on the tower be set up to avoid duplication of effort. We emphasise that this group will be essential for coordination of agreed protocols, implementation of strategic monitoring, and effective data sharing.</p>	<p>We are content that this has been updated in line with our advice.</p> <p>The Applicant welcomes Natural England's support on the Offshore Ornithology Engagement Group.</p>
3	7	18	7.2.2	<p>We note that the Applicant has provided more detail on the other sites that will be monitored as part of the monitoring plan, as requested.</p>	<p>We advise that the sites listed are appropriate, but the list is not exhaustive.</p> <p>This response is noted. A finalised list of sites to be monitored will be consulted upon and agreed within the engagement group post-consent.</p>

Ref	Deadline 4 submission	Applicant's comments
		Coordination with other developers and key stakeholders will be important for the implementation of a comprehensive monitoring programme.

2.16.4	Point Number	Location within Document	Submitted	Natural England Response	Applicant's comments		
		Section	Page	Paragraph, Table or Figure Number	Key Concern	Natural England's Advice to resolve the Issue	
	4	4	14	4.1.2	We advise that although recreational disturbance represents a general threat to guillemot and razorbill, it is not certain that it is the key threat affecting any given one of the shortlisted colonies. To confirm this requires a programme of monitoring at each site in which the number and scale of disturbance events is recorded and an effort is made to quantify its impact on the breeding success of the colonies (although we recognise that some effects such as low-level stress responses are difficult to quantify).	We advise that the next key step for the Applicant is to carry out a significant programme of monitoring at the shortlisted sites, along with engagement with local experts, to establish the current level of disturbance each colony is subject to and what the impacts are on breeding success of the guillemot and razorbill populations there. This should then be used to inform what compensation measures are likely to be effective at each particular site and to set a baseline against which the effectiveness of the proposed measures can be compared.	The Applicant welcomes agreement from Natural England that the proposed compensation measure is appropriate, should it be required. Site-investigations during the 2024 breeding season will provide further insight into the disturbance reduction measures that will be applicable to each site. The project is also considering a collaborative approach to this measure.

Ref	Deadline 4 submission				Applicant's comments	
5	4	15-17	4.2.5-4.2.12	<p>We advise that it is difficult to say how vulnerable a site is to incursions without examining the site directly. The Watson et al. (2014) study cited examined effects of disturbance on a burrow-nesting species (storm petrel), where the walkers were likely coming into close proximity with the burrows. We advise that it is reasonable to assume that the disturbance effects of walkers are much less for a cliff-nesting species. This is due to the fact that it is unlikely in most cases that colonies will be accessible to walkers, and in the majority of locations walkers will be out of sight and likely to be some distance away. We acknowledge that there is a potential pathway for disturbance or direct mortality to occur if walkers throw or dislodge material from the clifftop into a colony below.</p> <p>We advise that most of the examples of disturbance caused by dogs cited would also be far less applicable to cliff-nesting species, with the possible exception of noise disturbance.</p> <p>Furthermore, we advise that the examples given here of disturbance and mortality due to incursion by birdwatchers are unlikely to be as applicable to cliff-nesting species in most locations, as they are to species that nest on more accessible ground.</p>	<p>We advise this is considered when identifying the most appropriate sites for interventions.</p>	<p>The Applicant thanks Natural England for its insight. The Applicant is investigating a range of sites and measures and will consider the points raised when finalising compensation options, if required, post-consent.</p>
6	4	18-19	4.2.16-4.2.17	<p>We note that it is certainly possible that watercraft/aircraft pose a significant disturbance risk to auk colonies in the southwest. We advise that for the purposes of compensation, it is essential that the amount of disturbance each particular colony is subject to is monitored for a significant period of time in order to assess the likelihood that this is a major factor affecting the success of that particular colony.</p>	<p>See recommendation for point 4.</p>	<p>See response to point 4.</p>

Ref	Deadline 4 submission					Applicant's comments
7	5	24	5.1.9	We advise that the distance at which disturbance effects can be observed is likely to vary significantly both between species and between colonies within a single species. Therefore, establishing appropriate set back distances for the colonies listed may require a dedicated study effort. It may be the case that different watercraft warrant different set back distances depending on the effect they are observed to have.	See recommendation for point 4.	See response to point 4 .
8	5	25	5.1.14	We broadly agree with this monitoring approach and would add that it is important that as much time as possible is spent observing the colonies to record the number of disturbance events the colonies are subject to and their consequences, and also to gather as much data as possible on the direct causes of nest failure.	We advise this is considered in the survey design.	The Applicant understands that disturbance events can be rare and time is required to observe and understand pressures on seabird colonies. This has been considered in the survey design as best as possible. For example, weekends, bank holidays and sunny days during which footfall will be highest have been targeted.
9	6	46	6.13.6	We agree that hiring a warden or ranger is likely to be beneficial to sites where this is not already in place.	N/A	The Applicant welcomes Natural England's support on this matter.
10	6	46	6.13.7	We agree that stakeholder engagement could be an effective avenue for raising awareness and reducing disturbance at these sites	N/A	The Applicant welcomes Natural England's support on this matter.
11	7	50	7.1.1	We emphasise that site-specific surveys conducted during the breeding season to monitor productivity are essential for establishing a baseline against which the effect of any measures implemented can be assessed.	We advise that it should be ensured that site-specific surveys include effective monitoring of current productivity at each colony.	This advice has been noted. Productivity monitoring will be progressed post-consent, where possible. Surveys will be undertaken in collaboration with other projects if this is possible.
12	8	52	Table 8.1	We note that the Applicant states they have used the Hornsea Four method for calculating compensation quanta but has not provided details of the parameters used, so the calculations cannot be checked for accuracy.	We advise that a clear explanation of the method and parameters used to calculate the compensation quanta is submitted in an updated document.	The Applicant has provided the requested information using the 'Hornsea Four' method within the Deadline 3 Submission – 8.65 Guillemot and Razorbill Evidence and Roadmap [REP3-060] Table 8.1. Further detail on the calculation methods and the application of ratios have been provided in the Guillemot and Razorbill Evidence and Roadmap [REP3-060] (updated at Deadline 5).

Ref	Deadline 4 submission				Applicant's comments	
13	8	52	Table 8.1	We note that the Applicant has only considered a 1:1 compensation ratio. We advise that 2:1 and 3:1 compensation ratios are also presented.	We advise that the document is updated to also include 2:1 and 3:1 compensation ratios.	The application of compensation ratios has been provided in the Guillemot and Razorbill Evidence and Roadmap [REP3-060] (updated at Deadline 5).

Table 2-16 Applicant's comments to Natural England's Deadline 4 submissions – Appendix E4 Fish and Shellfish

Ref	Deadline 4 submission	Applicant's comments
2.16.1	<p>In formulating these comments, the following documents have been considered:</p> <ul style="list-style-type: none"> • [REP3-051] - 8.5.4 Applicant's Response to Examining Authority's Written Questions – including Appendix H FS: Noise Thresholds for Black Seabream and Appendix I MM: Noise Abatement Systems. • [REP3-052] - 8.55 Applicant's Response to Deadline 2 Submissions Rev A • [REP3-046] - 7.17 In Principle Sensitive Features Mitigation Plan (tracked changes) 	No response required.
2.16.2	<p>1. Summary</p> <p>Natural England have provided initial comments and clarifications based on the information submitted at Deadline 3 within the above documents. We advise that overall, the information provided at Deadline 3 has not resulted in any significant changes to our advice. We understand that the Applicant intends to submit further updated documents and additional information into the Examination at Deadline 4, particularly regarding additional underwater noise modelling and noise abatement systems. Therefore, Natural England will provide updated comments on this topic at Deadline 5 when we have had the opportunity to review further updates.</p> <p>We also understand that the Applicant will be submitting a without prejudice Measures of Equivalent Environmental Benefit (MEEB) case at Deadline 4.</p>	<p>The Applicant confirms that the following revised documents and additional information as relevant to fish and shellfish ecology, were submitted into the Examination at Deadline 4:</p> <ul style="list-style-type: none"> • In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), which details the Applicant's new commitment to the use of Double Big Bubble Curtains (DBBC) throughout the piling campaign (commitment C-265, Commitments Register [REP4-057], updated at Deadline 5); • Information to support efficacy of noise mitigation / abatement techniques with respect to site conditions at Rampion 2 Offshore Windfarm [REP4-067], which details the additional work undertaken to provide a comparison of the environmental conditions at the Proposed Development with other projects where Noise Abatement Systems (NAS) have been deployed; • Applicant's Post Hearing Submission – Issue Specific Hearing 1 Appendix 9 – Further information for Action Points 38 and 39 –Underwater Noise [REP4-061], which details the revised heatmapping of sandeel and herring spawning habitats as requested by the Marine Management Organisation (MMO); • Without Prejudice Measures of Equivalent Environment Benefit (MEEB) Review for Kingmere Marine Conservation Zone (MCZ) [REP4-078] which sets out the proposed options for MEEB specifically relating to the effects on the black seabream feature of the Kingmere MCZ, and MEEB would be secured and delivered; and • Kingmere Marine Conservation Zone (MCZ): Without Prejudice Stage 2 MCZ Assessment [REP4-071] submitted to support the Applicant's position that the conservation objectives of the black seabream feature of the Kingmere MCZ will not be hindered by the Proposed Development.
<p>2. Main Comments</p> <p>2.1 - [REP3-046] - Document 7.17 In Principle Sensitive Features Mitigation Plan (IPSFMP) (tracked changes)</p>		
2.16.3	<p>We note that an updated IPSFMP has been submitted at Deadline 3 and that the amendments to this do not represent significant changes in relation to fish and shellfish.</p>	<p>The Applicant confirms that, subsequent to its Deadline 3 submission, a further revised In Principle Sensitive Features Mitigation Plan [REP4-053] was submitted at Deadline 4. This reflects the Applicant's commitment to use double big bubble curtains (DBBC) throughout the piling campaign (Commitment C-265). The mitigated underwater noise impact ranges, with the use of DBBC are also presented within the In Principle Plan. Furthermore, additional work was undertaken looking into the efficacy of Noise Abatement Systems (NAS), this is detailed in Information to support efficacy of noise mitigation / abatement techniques with respect to site conditions at Rampion 2 Offshore Windfarm [REP4-067]. The Applicant would highlight that the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5) has also been updated to reflect the findings of this work.</p>

Ref	Deadline 4 submission	Applicant's comments
2.16.4	We note that point 5.5.3 does now consider that these mitigation measures are relevant to temporary threshold shift and behavioural disturbance impacts from underwater noise on black seabream within Kingmere Marine Conservation Zone (MCZ). We advise that there remains uncertainty over whether the noise contour for recoverable injury impacts will overlap with the MCZ (see our Deadline 3 Appendix E3 response [REP3-082]).	The Applicant notes that this is addressed in Section 6.1 Deadline 4 Submission – 8.25.1 Applicant's Post Hearing Submission – Issue Specific Hearing 1 Appendix 9 – Further information for Action Points 38 and 39 – Underwater Noise Revision B [REP4-061] , whereby the predicted worst case recoverable injury impact ranges from the closest noise modelling location (northwest noise modelling location) are presented relative to the Kingmere Marine Conservation Zone (MCZ). The unmitigated and mitigated noise contours, which have been updated at Deadline 4, show the Applicant's new commitment to the use of double big bubble curtains (DBBC) throughout the piling campaign. The mitigated recoverable injury noise contours (with the mitigation afforded by DBBC) show no overlap with the Kingmere MCZ.
2.16.5	We note that point 5.3.25 has not been amended to include the updated information presented in [PEPD-023] 6.4.8.4 - Environmental Statement - Volume 4- Appendix 8.4: Black Seabream Underwater Noise Technical Note and Survey Results - Revision A. Natural England provided a response to this report in Appendix E1 to our Deadline 1 Submission.	The Applicant has submitted a revised In Principle Sensitive Features Mitigation Plan at Deadline 4 [REP4-053] (to include updated noise abatement system assumptions) which has subsequently been updated at Deadline 5 to include a summary of the ambient noise survey detailed in Appendix 8.4: Black Seabream Underwater Noise Technical Note and Survey Results – Revision A [PEPD-023] .
2.16.6	We note that this plan has not been amended to include the updated information presented in Appendix H and I of document 8.5.4, which has introduced a number of inaccuracies within the information presented. We advise that a key inaccuracy is that the IPSFMP still suggests noise abatement measures can achieve more than a 20dB reduction, whereas appendix H suggests <i>'it has become apparent during this process is that noise reductions delivered through currently available noise mitigation or abatement systems may not reliably deliver reductions greater than 20dB'</i> . We therefore advise that an updated IPSFMP is submitted into the Examination, which reflects the current evidence and position. We note that the fact the Applicant has already had to reduce the levels of noise abatement they previously thought were achievable, does highlight our ongoing concerns around the achievability of specific figures using noise abatement, and therefore the uncertainties around what the final noise levels would be within the MCZ's. We understand that the Applicant is due to submit further site-specific information on Noise Abatement Systems at Deadline 4, we welcome this additional information being submitted into the Examination.	The Applicant confirms that a revised In Principle Sensitive Features Mitigation Plan [REP4-053] was submitted at Deadline 4 (also updated at Deadline 5). The Plan has been updated in accordance with the outputs from the work undertaken looking into the efficacy of NAS, as detailed in Information to support efficacy of noise mitigation / abatement techniques with respect to site conditions at Rampion 2 Offshore Windfarm [REP4-067] . Specifically, the Plan has been updated to reflect a 20 dB noise reduction from the use of double big bubble curtains (DBBC) and another noise abatement measure during the black bream nesting season, amongst other mitigation measures (including zoning, and piling sequencing). The Plan has also been updated to reflect the Applicant's commitment to use DBBC throughout the piling campaign (Commitment C-265).
2.2 - Document 8.54 Applicant's Response to Examining Authority's Written Questions – including Appendix H FS: Noise Thresholds for Black Seabream and Appendix I MM: Noise Abatement Systems		
2.16.7	Kingmere MCZ - Black seabream Assessment and Modelling Natural England has previously advised that habitation is not taken into account within the assessment. Please see Appendix E of our relevant representations (Point 32) for detailed advice.	The Applicant has noted the potential for acclimatisation of black seabream to repeated sound exposure but acknowledges that (as evidenced) this will occur over time. The Applicant, however, highlights that the assessment is inherently precautionary, with various measures of precaution applied when informing appropriate mitigation for black seabream. These include the use of maximum design and piling parameters, and a precautionary disturbance threshold (which is based on a startle response, and not a sustained behavioural change) to inform the underwater noise modelling, and subsequently the proposed mitigation measures (noise abatement systems, seasonal restrictions and zoning (secured through the In Principle Sensitive Features Mitigation Plan [REP4-053] , Condition 11(k)(l) of the deemed Marine Licences (dMLs), Schedules 11 and 12 of the Draft Development Consent Order [REP4-004]).

Ref	Deadline 4 submission	Applicant's comments
2.16.8	<p>Natural England note the comment: “<i>the range of potential effect between the fleeing and stationary models are presented and used to inform the assessment as the true impact range is expected to be within this range, rather than at either extreme</i>” (Document 8.55 - Answer to Q1.13.2). We highlight our previous advice that black seabream should not be considered fleeing receptors and that the modelling, figures and assessment of underwater noise should all be based on them being a static receptor. As stated in Appendix E of Natural England’s relevant representations (Point 20 and 22), we do not consider fleeing receptor models appropriate for black seabream because the MCZ protects all of the breeding behaviours of this species, in this specific location, which includes their ability to aggregate, nest, or lay, fertilise or guard eggs within the site free from significant disturbance during the breeding season (March-July inclusive). Therefore, any fleeing of the nests has the potential to hinder the conservation objectives of the MCZ.</p>	<p>The Applicant confirms that as a worst case, a stationary receptor model has been used for nesting black seabream to inform the underwater noise modelling, and the assessment of underwater noise impacts (as detailed in Chapter 8: Fish and shellfish ecology, Volume 2 of the Environmental Statement [APP-049]). A stationary receptor model was also used to inform the proposed mitigation measures proposed from March-July inclusive (noise abatement systems, seasonal restrictions and zoning) which are detailed in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5).</p>
2.16.9	<p>Thresholds for Behavioural Impacts</p> <p>We highlight that Natural England has consistently advised throughout the evidence plan process, our relevant representations, and our Examination responses that we do not agree that there is sufficient evidence to support a threshold being established below which behavioural impacts on black seabream that could hinder the conservation objectives will not occur. We therefore highlight that the comment “Sprat are suggested as a suitable proxy by Natural England and the Marine Management Organisation (MMO), based on a study by Hawkins et al. (2014), which recorded initial responses of the species at 135 dB SELs” does not accurately represent Natural England’s position (Document 8.54 - Answer to FS 1.4). We also refer you to our comments in our Appendix E1 regarding baseline noise levels and the increase 135dB represents from these.</p>	<p>The Applicant acknowledges Natural England’s position on this, and confirms that Natural England have maintained a position that they do not agree that there is sufficient evidence to support a disturbance threshold being established for nesting black seabream. The suggestion of sprat as a suitable proxy species (based on a study by Hawkins <i>et al.</i> 2014) was made by the MMO (originally in the Expert Topic Groups, Evidence Plan (Part 1 of 11) [APP-243], page 525. UWN Mitigation Targeted Meeting, 24/02/2022, and more recently in its Deadline 4 submission [REP4-088]).</p> <p>The Applicant maintains its position that, as informed by a thorough review of available literature and data whereby no species-specific information for black seabream was identified, seabass is a suitable proxy, due to being morphologically similar to black seabream. The Applicant is therefore confident that a disturbance threshold of 141 dB SELs (based on seabass as a proxy species (Kastelein <i>et al.</i>, 2017)) is a suitably precautionary threshold for the assessment of underwater noise impacts on nesting black seabream.</p>
2.16.10	<p>Mitigation</p> <p>Natural England continue to advise that no piling taking place between March to July inclusive is the only measure which will avoid hindering the conservation objectives of Kingmere MCZ.</p> <p>Natural England are supportive of the use of noise abatement technology as part of offshore wind developments. However, based on our advice that there is not a suitable threshold to mitigate down to in relation to behavioural impacts on black seabream, in this case, noise mitigation does not currently present a mechanism that could lead to us advising that the conservation objectives will not be hindered in relation to Kingmere MCZ.</p> <p>Natural England also continue to advise against a zoned approach to piling being implemented (see Appendix E of our relevant representations).</p>	<p>The Applicant directs Natural England to the Applicant’s response to Ref 2.1.2 of Applicant’s Comments on Deadline 3 Submissions Revision A [REP4-070].</p>
2.16.11	<p>Short-snouted seahorses</p> <p>Natural England requested modelling of behavioural noise impacts on short-snouted seahorse at Deadline 3 (Appendix E3) and in our relevant representations (Point 46), the</p>	<p>The Applicant confirms that a revised In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5) was submitted at Deadline 4. The behavioural noise impact ranges for seahorses are presented in Figures 5.14 to 5.17, as relative to Marine Conservation Zones (MCZs) within the vicinity of the Proposed Development, of which seahorse are a</p>

Ref	Deadline 4 submission	Applicant's comments
	<p>provision of which is still outstanding. We understand that further modelling and information on noise abatement measures is to be provided at Deadline 4, therefore we will provide updated comments on seahorses at Deadline 5.</p>	<p>qualifying feature. As evident in Figures 5.14 to 5.17, with the use of double big bubble curtains (DBBC) throughout the piling campaign, there will be no disturbance to seahorses within the MCZs, and therefore, the Conservation Objectives will not be hindered.</p>
2.16.12	<p>Noise Abatement Systems</p> <p>We understand that the Applicant will submit additional information to the Examination regarding Noise Abatement Systems at Deadline 4 and note that this is likely to be relevant to fish and shellfish, as well as our Deadline 3 submission on marine mammals (Appendix C3).</p> <p>We highlight that our key concern remains the lack of evidence provided to date of the efficacy of these measures in the specific environmental conditions (such as water depth, soil geology, speed of local currents, wave height and wind speed) at the Rampion 2 site. We await the additional information to provide full comments, however, we highlight the following key points from the information in Appendix I:</p> <ul style="list-style-type: none"> • There appears to be uncertainties regarding the implementation and demonstrable efficacy of many of the measure at depths of more than 40m. Given it is stated that the “water depth in the array area ranges from 13 m to 65 m below Lowest Astronomical Tide (LAT)” we advise that this appears to be a clear limitation. We seek clarity on the areas of the array that are below 40m. We also seek clarity on the maximum depth as both 65m and 53.4m are stated. • It is suggested that some of the measures (such as the Hydro Sound Damper) have not been tested on jacket foundations and cannot be used on monopiles more than 13m. We advise this appears to be a limitation given jacket foundation are within the design envelope and the maximum monopile diameter is 13.5m. • The information on the Blue Hammer relates to 22m depths and 6.5m diameter piles, both of which are significantly lower than the figures of up to 65m depth and 13.5 diameter piles quoted in the maximum design scenario for Rampion 2. • We note that Verfuss et al. 2019, which is quoted by the Applicant clearly suggests that when measures are combined ‘the resulting reduction in SELss would be lower than the sum of each single reduction’. We advise this needs to be taken into account with regards to the achievability of the maximum 20dB reduction stated. 	<p>The Applicant confirms that additional work has been undertaken looking into the efficacy of Noise Abatement System (NAS). This work is detailed in Information to support efficacy of noise mitigation / abatement techniques with respect to site conditions at Rampion 2 Offshore Windfarm [REP4-067]. As detailed in Information to support efficacy of noise mitigation / abatement techniques with respect to site conditions at Rampion 2 Offshore Windfarm [REP4-067], in consideration of the site characteristics and noise abatement levels, and taking into consideration the outputs of live monitoring of numerous projects whereby NAS have been applied successfully, it is apparent that up to 20 dB noise reduction can be achieved (within depths of ≤ 40 m, and other environmental parameters, such as speed of local currents, wave height), through the use of a combination of measures, comprising the double big bubble curtains (DBBC) as the principal measure, together with an additional noise abatement measure, which will be selected based on the most appropriate equipment available at the time of construction.</p> <p>The outputs of this work have been used to inform the revised In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5). Specifically, the Plan has been updated to reflect a 20 dB noise reduction from the use of DBBC and another noise abatement measure during the black bream nesting season, amongst other mitigation measures (including zoning, and piling sequencing). The Plan has also been updated to reflect the Applicant’s commitment to use DBBC throughout the piling campaign (Commitment C-265).</p>
2.16.13	<p>We also note that there appears to be some inconsistency between what is presented here and in the In Principle Sensitive Features Mitigation Plan. We advise that the plan is thoroughly updated to represent the most up to date information across all areas.</p>	<p>The Applicant directs Natural England to reference 2.1.12 above.</p>

Table 2-17 Applicant's comments to Natural England's Deadline 4 submissions – Appendix J4a Terrestrial Ecology

Ref	Deadline 4 submission	Applicant's comments
2.17.1	<p>In formulating these comments, the following documents have been considered:</p> <ul style="list-style-type: none"> • [APP-003] 5.8 Design and Access Statement Rev B (tracked) • [APP-224] 7.2 Outline Code of Construction Practice Rev C (tracked) • [APP-232] 7.10 Outline Landscape and Ecology Management Plan (Tracked) Rev B <p>Natural England do not have any further comments to make on the following documents at this time:</p> <ul style="list-style-type: none"> • [REP3-022] 6.4.23.2 ES Volume 4 Appendix 23.2 Traffic Generation Technical Note Rev C (Tracked) • [REP3-024] 7.1 Outline Operational Drainage Plan Rev B (tracked changes) • [REP3-030] 7.6 Outline Construction Traffic Management Plan Rev D (tracked) • [REP3-032] 7.7 Outline Construction Workforce Travel Plan Rev B (tracked) • [REP3-034] 7.8 Outline Public Rights of Way Management Plan Rev B (tracked) • [REP3-036] 7.9 Outline Onshore Written Scheme of Investigation Rev B (tracked) • [REP3-053] 8.59 Air Quality Mitigation Strategy Rev A • [REP3-054] 8.60 Outline Noise and Vibration Management Plan Rev A • [REP3-055] 8.61 Construction Access Update Assessment Summary Rev A • [REP3-056] 8.62 Outline Air Quality Management Plan Rev A 	Noted, the Applicant has no further comments at this stage.
2.17.2	<p>1. Summary</p> <p>Natural England has reviewed the relevant documents submitted by the Applicant at Deadline 3. Our main outstanding concerns are set out below with more detailed advice regarding these documents provided in Table 1. It should be noted that these comments only relate to terrestrial ecology aspects of these documents.</p>	Noted, the Applicant has provided a response to Natural England's main outstanding concerns below.
2.17.3	<p>1.1 Horizontal Directional Drilling (HDD)</p> <p>Natural England still maintains major concerns with regard to the feasibility of proposed trenchless drilling technique without detailed ground investigation at ecologically sensitive sites. Natural England has discussed this issue with the Applicant and will provide a further response once we have reviewed the Applicants written submission of their oral case from Issue Specific Hearing 2.</p>	<p>The Applicant notes Natural England's comment regarding this matter, and has provided a summary of the oral case provided at Issue Specific Hearing 2 in Applicant's Post Hearing Submission – Issue Specific Hearing 2 [REP4-072].</p> <p>The Applicant has discussed this issue with Natural England on 22 May 2024, 27 June 2024, and 02 July 2024. It has been agreed that a consensus position on this issue cannot be reached and has been recorded in Statement of Common Ground Natural England (Document Reference: 8.8) submitted at Deadline 5.</p>
2.17.4	<p>1.2 Licensable Protected Species</p>	The Applicant met with Natural England on 22 May 2024, 27 June 2024, and 02 July 2024 and discussed licensable protected species.

Ref	Deadline 4 submission	Applicant's comments																			
	Protected species licences are required from Natural England for any development activities which carry the risk of impacts to the relevant protected species and/or their habitats, and which may be significantly impacted by the development proposals.	<p>The Applicant has provided Natural England with a draft licence application for hazel dormouse and water vole with the aim of receiving letters of no impediment (Natural England responses on these are expected after Deadline 5). In addition, the Applicant has provided the justification as to why draft licence applications are not necessary at this stage for badgers and bats and have agreed that Natural England will have no further comments on these species. This will be reflected in Natural England's Issues and Risk Log which they intend to submit at Deadline 6.</p> <p>The Applicant has included a Requirement within the Draft Development Consent Order [REP4-004] updated at Deadline 5, which further secures pre-construction surveys for protected species and agreement of suitable mitigation (and licensing if applicable) with the relevant local planning authority and Natural England.</p>																			
2.17.5	Natural England advises that the best course of action for the resolution of protected species matters would be to for the Applicant to submit draft protected species licence applications to Natural England for review via the Pre-Submission Screening Service (PSS). If Natural England agrees with the Applicant and proposed mitigation commitments, Natural England may provide Letters of No Impediments to the progression of the Application, to ensure the ExA has the necessary certainty in this regard. Further engagement on this issue will therefore only be undertaken as part of direct communication between the external NSIP project team and Natural England's Wildlife Licensing Service (NEWLS). Natural England advises that all efforts should be made by the Applicant to obtain Letters of No Impediments from Natural England before the end of the Examination, and that these should be agreed before the Secretary of State makes the final consenting decision on the project.	Please see response to reference 2.17.4 above.																			
2.17.6	Natural England will not be providing any further detailed advice within the Examination on licensable species unless they are a notified feature of protected site for which Natural England is the statutory consultee.	The Applicant notes this comment and confirms the position has been discussed with Natural England.																			
2.17.7	<p>2. Detailed Comments Table 1 Summary of Key Issues Document Reviewed - [APP-003] 5.8 Design and Access Statement Rev B (tracked)</p> <table border="1"> <thead> <tr> <th rowspan="2">Point number</th> <th colspan="3">Location within submitted Document</th> <th colspan="2">Natural England Response</th> <th rowspan="2">Applicant's comments</th> </tr> <tr> <th>Section</th> <th>Page</th> <th>Paragraph, Table or Figure number</th> <th>Key Concern</th> <th>Natural England's Advice to resolve the issue</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>3.5</td> <td>37</td> <td>4.1.5 and 4.1.6</td> <td>It is stated that 'TE2 Prior to commencement of the onshore substation site preparation works, advance planting will be provided along the western extent of the Oakendene onshore substation site to provide mitigation for the loss of dormouse habitat. This will</td> <td>We welcome clarification regarding the phasing of habitat reinstatement at Oakendene substation. To progress this issue please see response above relating to licensable protected species under section 1.2.</td> <td>The Applicant acknowledges Natural England's view on the clarification regarding the phasing of habitat reinstatement at the onshore substation at Oakendene, please see response to reference 2.17.4 above in relation to licensable protected species.</td> </tr> </tbody> </table>		Point number	Location within submitted Document			Natural England Response		Applicant's comments	Section	Page	Paragraph, Table or Figure number	Key Concern	Natural England's Advice to resolve the issue	1	3.5	37	4.1.5 and 4.1.6	It is stated that 'TE2 Prior to commencement of the onshore substation site preparation works, advance planting will be provided along the western extent of the Oakendene onshore substation site to provide mitigation for the loss of dormouse habitat. This will	We welcome clarification regarding the phasing of habitat reinstatement at Oakendene substation. To progress this issue please see response above relating to licensable protected species under section 1.2.	The Applicant acknowledges Natural England's view on the clarification regarding the phasing of habitat reinstatement at the onshore substation at Oakendene, please see response to reference 2.17.4 above in relation to licensable protected species.
Point number	Location within submitted Document			Natural England Response		Applicant's comments															
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1	3.5	37	4.1.5 and 4.1.6	It is stated that 'TE2 Prior to commencement of the onshore substation site preparation works, advance planting will be provided along the western extent of the Oakendene onshore substation site to provide mitigation for the loss of dormouse habitat. This will	We welcome clarification regarding the phasing of habitat reinstatement at Oakendene substation. To progress this issue please see response above relating to licensable protected species under section 1.2.	The Applicant acknowledges Natural England's view on the clarification regarding the phasing of habitat reinstatement at the onshore substation at Oakendene, please see response to reference 2.17.4 above in relation to licensable protected species.															

Ref	Deadline 4 submission			Applicant's comments
				include a 15m wide strip of woodland and scrub planting and plugging of hedgerow gaps as shown on the Appendix D Oakendene onshore substation - Indicative Landscape Plan. This advanced planting will also provide opportunities to a range of other species including foraging bats and reptiles.'
2	5.6	57	Table 5-5	<p>Commitment C-135 states that <i>'A stand-off distance of at least 3m (with greater distances implemented based on local biodiversity and pollution control considerations) will be applied from watercourse bank tops (other than for watercourse crossings) to account for potential issues such as water vole burrows, otter holts and pollution control.'</i></p> <p>To progress this issue please see response above relating to licensable protected species under section 1.2.</p> <p>Please see response to reference 2.17.4 above.</p>
3	5.6	6159	Table 5-5	<p>Commitment C-216 states that <i>'All ancient woodland will be retained. A stand-off of a minimum of 25m from any surface construction works will be maintained in all locations from cable installation works. Construction traffic may operate within 25m of an ancient woodland on existing tracks, with any track maintenance works being restricted to the current width. Works to provide safe access from the highway are required in three locations within 25m of ancient woodland, being accesses A-42, A-56 and A-57. At these locations specific design measures detailed in the Outline Code of Construction Practice will manage any potential indirect effects on</i></p> <p>Natural England advise that there is insufficient information provided by the Applicant to assess whether 6m is sufficient. We advise it is for the Applicant to clearly outline the evidence which underpins the proposed methodologies to avoid impacts to sensitive ecological features. Natural England has discussed this issue with the Applicant and will review further information provided to progress this issue.</p> <p>The Forestry Commission information note <i>'The influence of soils and species on tree root depth'</i> (2005) notes that between 90 and 99% of tree roots occur within the upper 1m of soil, and only 5% of trees had root depths greater than 2m.</p> <p>The 6m drill depth allows for the rooting area to be avoided plus an additional 4 to 5m of soil to guard against drilling fluids migrating into the rooting area.</p>

Ref	Deadline 4 submission			Applicant's comments
4	5.6	61	Table 5-5	<p><i>ancient woodland. Where ancient woodland is crossed via trenchless crossing a depth of at least 6m below ground will be maintained to avoid root damage and drill launch and retrieval pits will be at least 25m from the woodland edge'.</i></p> <p>Commitment C-278 states that <i>'Trenchless crossings of Climping Beach SSSI, Sullington Hill LWS, Atherington Beach and Littlehampton Golf Course LWS would be designed to ensure a minimum depth of 5m is maintained when passing beneath them to reduce the risk of drilling fluid breaking out to the surface and avoid archaeological remains of high heritage significance at Climping Beach (identified currently or during pre-commencement investigations)'.</i></p> <p>As above Natural England reiterates our previous comments made at within our Appendix N3 [REP3-086] that there is insufficient information provided by the Applicant to assess whether 5m is sufficient. We advise it is for the Applicant to clearly outline the evidence which underpins the proposed methodologies to avoid impacts to sensitive ecological features. We advise that without geotechnical information it is not possible to ascertain whether the 5m proposed is feasible at this location. See Natural England's response in our Appendix N3 [REP3-086].</p> <p>The minimum depth suggested during examination (5 to 10 m) is a reasonably expected minimum value based on the experience of the engineers and is not yet informed by any specific geotechnical information (to be collected at a later date), or new design specific studies beyond that presently available and used to inform the Environmental Statement. The Applicant has given a detailed overview for the relevant technical factors to be considered in future assessments, surveys and ultimately engineering design in Applicant's Post Hearing Submission – Issue Specific Hearing 1 Appendix 6 – Further information for Action Point 7 – Horizontal Directional Drilling at Climping Beach [REP1-026] (submitted at Deadline 1).</p> <p>The Applicant is confident that the future detailed design process and has committed to installing the trenchless crossing to a minimum depth of 5m, informed by additional ground investigation works, will identify a suitable and achievable depth of burial to avoid exposure of the cable due to reasonably predictable patterns of future coastline retreat.</p> <p>In accordance with the request from the Examining Authority at Issue Specific Hearing 2 (May 2024), the Applicant has updated Requirement 23 of the Draft Development Consent Order [REP4-004] at Deadline 4 to secure that the construction method statement for Work Nos 6 and 7 include the depth of the HDD. This will require to be approved by the relevant planning authority following consultation with the statutory nature conservation body and Marine Management Organisation.</p> <p>The Applicant provided a response to Natural England's Appendix N3 [REP3-086] regarding comments raised in Applicant's Response to Stakeholder's Replies to Examining Authority's Written Questions [REP4-079] (submitted at Deadline 4). Further to this, the Applicant provided a response to Action Point 17 regarding this matter following Issue Specific Hearing 2 in Applicant's Responses to Action Points Arising from ISH2 and CAH1 [REP4-074].</p>

Ref	Deadline 4 submission				Applicant's comments	
5	5.6	61	Table 5-5	<p>Commitment C-291 states that <i>'Where hedgerow, tree lines or belts of scrub are temporarily lost to facilitate the installation of cable ducts, suitable material (such as straw bales, dead hedging, willow hurdles etc.) will be placed in the gaps to facilitate bat movement along linear corridors following backfill of cable trenches and until such time as reinstatement begins. This also applies to haul roads - in the time period after the removal of the haul road, prior to reinstatement of hedging.'</i></p>	<p>Natural England welcomes the commitment to further mitigation measures which ensure habitat functionality and connectivity.</p>	<p>The Applicant acknowledges Natural England's view on commitment C-291 (Commitments Register [REP4-057]) to further mitigation measures which ensure habitat functionality and connectivity.</p>
6	5.6	64	5.6.18	<p>It is stated that <i>'There are three accesses where construction works will take place within 25m of ancient woodland. At access A-42 a new access from The Pike is to be created adjacent to that used by an existing timber yard business. This access solution is to minimise the length of hedgerow loss and retain a category A ash tree. A bell mouth will be constructed and be just over 15m from the edge of ancient woodland. At access A-56 ancient woodland is present north of Greentree Lane. No works are required to gain access within the ancient woodland but widening of the existing bell mouth and track to its southern side will be necessary. At access A-57 bell mouth construction will take place within approximately 12m of some ancient woodland, although on the opposite side of the A281.'</i></p>	<p>Ancient Woodland guidance highlights that <i>"where possible, a buffer zone should:</i></p> <ul style="list-style-type: none"> <i>contribute to wider ecological networks</i> <i>be part of the green infrastructure of the area</i> <p><i>A buffer zone should consist of semi-natural habitats such as:</i></p> <ul style="list-style-type: none"> <i>woodland</i> <i>a mix of scrub, grassland, heathland and wetland</i> <p><i>The proposal should include creating or establishing habitat with local and appropriate native species in the buffer zone. You should consider if access is appropriate. You can allow access to buffer zones if the habitat is not harmed by trampling.'</i></p> <p>We advise such measures are given further consideration by the Applicant.</p>	<p>The Applicant notes that the works around ancient woodland are either for cable installation or construction access points, both of which may result in temporary effects only. The stand-off to ancient woodland is in place to ensure that any indirect effects can be managed appropriately. The Applicant does not consider it necessary or proportionate (noting that the areas will go back to the management of the landowner) to create new types of habitat in these areas.</p>

Ref	Deadline 4 submission			Applicant's comments	
7	5.6	71	5.6.58 & 5.6.59	<p>5.6.58 states that '<i>The EcoW will oversee a programme of water vole surveys in suitable habitat within 200m of any working area at least two months prior to expected activity in that area (C-210)</i>'.</p> <p>5.6.59 states that '<i>The ECoW will continue to carry out checks of suitable habitat within 200m of the working area for water vole in the days prior to construction occurring in each relevant area</i>'.</p>	<p>Natural England welcomes the inclusion of "<i>within 200m of any working area</i>". To resolve this issue please see response above relating to licensable protected species under section 1.2.</p> <p>The Applicant acknowledges Natural England's view on this inclusion of this amendment, please see response to reference 2.17.4 above regarding licensable protected species.</p>

Table 2-18 Applicant's comments to Natural England's Deadline 4 submissions – Appendix J4b Biodiversity Net Gain

Ref	Deadline 4 submission	Applicant's comments
2.18.1	In formulating these comments, the following documents have been considered: <ul style="list-style-type: none"> [APP-193] Volume 4, Appendix 22.15 Biodiversity Net Gain information (BNG) (Revision B) - Tracked Changes Version 	Noted, the Applicant has no further comments at this stage.
2.18.2	1. Summary Natural England wishes to highlight a significant risk in that the Biodiversity Net Gain Appendix 22.15 does not refer to adhering to the mitigation hierarchy at the detailed design phase. It is important that all biodiversity losses are avoided/reduced in the first instance, only moving to mitigation once all avenues to avoid loss are exhausted. We recommend that the Appendix makes it clear that the mitigation hierarchy will be followed throughout detailed design stage to avoid biodiversity loss in the first instance..	The Applicant notes that commitment C-292 (see Outline Code of Construction Practice [REP4-043]) ensures that the mitigation hierarchy will be followed throughout the detailed design process, and as a result in the delivery of BNG. The Applicant has updated Appendix 22.15: Biodiversity Net Gain Information, Volume 4 of the Environmental Statement [REP3-020] at Examination Deadline 5 to reference this.
2.18.3	Natural England welcomes the commitment to providing 10% Biodiversity Net Gain (BNG) as part of the Rampion 2 project in advance of the mandatory requirement for Nationally Significant Infrastructure Projects in 2025.	The Applicant welcomes Natural England's comment regarding the Proposed Development's commitment to provide 10% Biodiversity Net Gain in advance of the mandatory requirement to do so.
2.18.4	We welcome the commitment to providing 70% of the requirement in advance of any loss which will help deliver positive outcomes for biodiversity earlier in the process than then would typically occur.	The Applicant welcomes Natural England's comment regarding the Proposed Development's commitment to provide 70% of the requirement in advance of any loss which will help deliver positive outcomes for biodiversity earlier in the process.
2.18.5	Natural England acknowledges that there is currently a deficit in terms of biodiversity units and that this has resulted in an unclear representation of units required for no net loss and biodiversity net gain. We note the Applicant proposes to address the unit deficit by purchasing biodiversity credits through a scheme which is yet to be identified, though some possible options have been put forward.	Noted, the Applicant has no further comments at this stage.
2.18.6	Natural England typically expects; units, habitats, and a suitable scheme to have been identified and secured within the DCO. Natural England recognises that there are inherent difficulties with this due to various aspects of the scheme being finalised at the post consent detailed design stage. While we do not think that this is the best way of approaching BNG requirements, through conversations held with the Applicant we understand the difficulty in distinguishing between mitigation, compensation, enhancement and net gain at this stage.	The Applicant welcomes Natural England's comments and notes that the approach being taken is in line with that of National Grid's recently consented Yorkshire Green project.
2.18.7	We recognise that this information will not be provided during the Examination phase and that Natural England will be consulted on post consent plans. We provide the following comments on the current iteration of BNG documents, but do not anticipate providing further detailed comments within the Examination.	Noted, the Applicant has no further comments at this stage.
2.18.8	2. Detailed Comments Table 1 Summary of Key Issues Document Reviewed - [APP-193] Volume 4, Appendix 22.15 Biodiversity Net Gain information (Revision B) - Tracked Changes Version	

Ref	Deadline 4 submission				Applicant's comments	
	Location within submitted Document		Natural England Response		Applicant's comments	
	Section	Page	Paragraph, Table or Figure number	Key Concern		Natural England's Advice to resolve the issue
1	4	13	4.1.2	It is stated that ' <i>During the detailed design phase, a full survey of affected habitats will be undertaken using the UK Habitat Classification version 2 and the condition assessment criteria published alongside the Statutory Biodiversity Metric (Defra, 2023)</i> '	<p>We welcome that a commitment has been made (C-294) to undertaking further survey work to ascertain the most up to date habitat type and condition to inform the baseline calculations and, ultimately, the units required to achieve a 10% net gain. In addition, we note that the document has been updated to confirm that calculations will be undertaken using the Statutory Biodiversity Metric which is in line with national guidance.</p>	<p>The Applicant welcomes Natural England's comment regarding the commitment to undertake further survey work to ascertain the most up to date habitat type and condition to inform the baseline calculations and, ultimately, the units required to achieve a 10% biodiversity net gain.</p>
2	4	14	4.1.3	<p>We note that Tables 4-1 to 4-3 have been amended to display the retained, reinstated and permanently lost habitat by local authority area (Arun District, Horsham District and Mid-Sussex District). There are additional tables (4-4 to 4-6) displaying the same information for the South Downs National Park, however this is not additional losses but instead a subset of losses displayed for Arun and Horsham Districts.</p> <p>Our advice is that it would be clearer to display South Downs National Park as an entirely separate set of habitats to be retained, reinstated and permanently lost rather than having some losses displayed</p>	<p>We advise that baseline habitat units and status are displayed separately for Arun District, Horsham District, Mid-Sussex District and South Downs National Park.</p>	<p>The Applicant has updated Appendix 22.15: Biodiversity Net Gain Information, Volume 4 of the Environmental Statement [REP3-020] at Examination Deadline 5 to show the following areas:</p> <ol style="list-style-type: none"> 1. Arun District (outside of the South Downs National Park) 2. The South Downs National Park (areas within both Arun District and Horsham District) 3. Horsham District (outside of the South Downs National Park) 4. Mid-Sussex

Ref	Deadline 4 submission			Applicant's comments		
3	4	37	4.1.7	<p>twice. This would prevent any potential double counting of units in calculations.</p> <p>We appreciate that, until the final detailed design stage, it is not possible to make assumptions in terms of habitat delivery and reinstatement and that the annex assumes no advanced delivery of units and no time delay. However, we would recommend avoiding stating that providing a large number of biodiversity units pre-commencement would 'balance out' the temporary losses as they are not located in the same area and thus the impact on biodiversity, however temporary, is not negated.</p>	<p>We advise that this paragraph is amended to remove the sentence '<i>However, as the approach detailed in Section 5 will provide a large number of biodiversity units pre-commencement of construction it is a reasonable assumption to make that overall advances or delays would not alter the overall outcome markedly at this juncture (i.e. they will balance each other out)</i>'.</p>	<p>The Applicant will further update Appendix 22.15: Biodiversity Net Gain Information, Volume 4 of the Environmental Statement [REP3-020] at Examination Deadline 5 to alter this wording.</p>
4	4	41	Table 4-8	<p>As advised in our response to the Examiners written questions (Appendix N3 [REP3-086]), we do not feel that Table 4-8 (previously Table 4-5) currently provides a sufficiently clear and transparent explanation of the units required to achieve no net loss and biodiversity net gain.</p>	<p>We advise that the table is revised to include additional information via further narrative or tabular information to make a clear distinction between habitats to be provided via the mitigation hierarchy (i.e. reinstatement of temporary losses and replacement of permanent losses) and those that are required to achieve BNG (additional habitat creation).</p>	<p>The Applicant will further update Appendix 22.15: Biodiversity Net Gain Information, Volume 4 of the Environmental Statement [REP3-020] at Examination Deadline 5 to provide further explanation.</p>

Table 2-19 Applicant's comments to Natural England's Deadline 4 submissions – Appendix J4c Soils

Ref	Deadline 4 submission	Applicant's comments
2.19.1	<p>In formulating these comments, the following documents have been considered:</p> <ul style="list-style-type: none"> [APP-224] 7.2 Outline Code of Construction Practice Rev C (tracked) [APP-226] 7.4 Category 7: Other Documents Outline Soils Management Plan (OSMP) (tracked changes) Revision B 	Noted, the Applicant has no further comments at this stage.
2.19.2	<p>1. Summary Natural England welcomes updated documents regarding management of soils. The Applicant has addressed several of our earlier comments. However, we advise several additional minor amendments required. Natural England advise that additional surveys will be required post consent to inform the final Soils Management Plan.</p>	The Applicant welcomes Natural England's position that a number of their earlier comments regarding soil management have been addressed. Please see the Applicant's responses to references 2.1.3 to 2.1.7 below in regard to the further minor amendments required and the extent/timing of post-consent surveys to inform the stage specific Soils Management Plan (secured via Requirement 22 within the Draft Development Consent Order [REP4-004]).
2.10.3	<p>2. Main Comments [APP-224] 7.2 Outline Code of Construction Practice Rev C (tracked) Section 2.6 Natural England welcomes the inclusion of supervisory inspection and ongoing engagement between landowners and farmers. However, from the list of duties in this section it is unclear whether the day-to-day requirements of carrying out soil tests will be met. We advise that Soil examination tests undertaken in the field to differentiate between varying soil moisture states will require the presence of a suitably qualified and experienced soil scientist. When dealing with best and most versatile (BMV) soils the Applicant should ensure the soil scientist used has enough experience to make the correct judgements when handling highly sensitive soils. We advise that the document is updated to provide clarity on this point.</p>	<p>The Applicant has updated the Outline Soils Management Plan [REP3-027] at Deadline 5 to include provision of practical training on how to carry out soil examination to be provided by qualified soil scientists to the relevant site personnel (i.e. the appointed contractor's site workers and site supervisors who will undertake or oversee soil handling and storage). The stage specific Soils Management Plans (SMP) will be developed in accordance with the Outline Soils Management Plan [REP3-027] secured via Requirement 22 within the Draft Development Consent Order [REP4-004].</p> <p>The Applicant proposes that this training will be provided at the start of the construction phase (prior to soil handling taking place) and training will be refreshed or repeated as needed (e.g., due to a change of site personnel) during the construction phase of the Proposed Development. The stage specific SMPs will include further details of training requirements, such as provision of training prior to construction activity beginning in an area where soils are particularly susceptible to damage.</p>
2.10.4	<p>Section 4.4 Natural England advises that an assessment of whether soils are sufficiently dry to be handled (paragraph 5.2 Soil Stripping in the OSMP) should be carried out during the 'shoulder hour'. It is the responsibility of the appointed qualified soil scientist to make the level of check needed to ensure soils are handled according to Defra Construction Code of Practice. We advise that the documents are updated to provide clarity on this point.</p>	The timing of soil assessments prior to soil handling may not necessarily be limited to the shoulder hours, however the Applicant is committed to compliance with the measures in Section 5.2 of the Outline Soils Management Plan [REP3-027] which require soil to be assessed for suitability for handling in advance of handling and in response to rainfall events.
2.10.5	<p>Table 4-8 – Commitment - 7 Natural England acknowledges and welcomes commitment 7. We advise that stage specific surveys should be in accordance with the OSMP (para 1.2.5).</p>	Noted, the Applicant has no further comments at this stage.
2.10.6	<p>[APP-226] 7.4 Other Documents Outline Soils Management Plan (tracked changes) Revision B Section 1.2 Paragraph 1.2.5 Natural England advises that the final sign off of the soil management plans should be based on detailed Agricultural Land Classification (ALC) surveys post consent. We advise that a detailed ALC and agricultural land soil survey should be undertaken across the full Study Area. As a minimum we would expect these surveys to included one auger boring per</p>	Commitment C-183 (Commitments Register [REP4-057]) states ' <i>Where safety (unexploded ordnance - UXO) or access constraints have limited the extent of soil and ALC survey to date, survey will be completed at the required density post consent and prior to construction, as part of detailed design. Stage specific SMPs based in the Outline SMP will be produced prior to construction, and once the soil and ALC surveys are complete, to include protective measures for all relevant soil types and agricultural land grades within the working corridor</i> '.

Ref	Deadline 4 submission	Applicant's comments
	<p>hectare, supported by pits dug in each main soil types to confirm the physical characteristics of the full depth of the soil resource, i.e. 1.2 metres. We advise that soil data collected as part of an ALC survey should also be used to inform the soil resource plan and soil management plan as set out in the Defra Construction Code of Practice for the Sustainable Use of Soils on Construction Sites.</p> <p>Section 3 Paragraph 3.1.4 We advise that in the absence of detailed characterisation surveys for large areas of the site at the consenting phase, it is not possible to provide an accurate baseline and demonstrate the likely potential impacts. We acknowledge that the mitigation measures may therefore be considered by the Applicant as overly precautionary, but without this data we advise that the Applicant is currently unable to demonstrate that significant impacts to BMV will be avoided, or that the design of potential mitigation will safeguard the soil resources. We understand that these detailed surveys will be undertaken post consent, and the Local Planning Authority will need to ensure that the mitigation measures remain fit for purpose.</p>	<p>Paragraph 1.2.5 within the Outline Soils Management Plan [REP3-027] confirms that ALC surveys will be completed by suitably qualified and experienced soil scientists or experienced soil specialists prior to the relevant stage construction of the Proposed Development using the same standards as the survey completed to date (i.e. in accordance with the Ministry of Agriculture, Fisheries and Food (MAFF) (1988) Agricultural Land Classification guidelines based on soil observations (auger boring supplemented by hand dug pits) at 100 m intervals along a grid corridor, giving a density of one observation per hectare to a maximum depth of 1.2 m).</p> <p>The Agricultural Land Classification (ALC) report(s) for areas within the proposed DCO Order Limits where soil disturbance will take place and that have not been surveyed to date, will be provided to Natural England and the Local Planning Authority once available. The stage specific Soils Management Plans (SMPs), developed in accordance with the Outline Soils Management Plan [REP3-027], will refer to the complete ALC survey data for the relevant stage.</p> <p>The Applicant notes that Requirement 22 within the Draft Development Consent Order [REP4-004] stipulates that “<i>no stage of any works landward of MLWS is to commence until a detailed code of construction practice for the stage has been submitted to and approved by the relevant planning authority, following consultation with the Environment Agency, the statutory nature conservation body, the highway authority and the lead local flood authority</i>” (underlined for emphasis). Requirement 22 (4) (f) within the Draft Development Consent Order [REP4-004] also stipulates that “<i>The code of construction practice must accord with the outline code of construction practice and include, as appropriate to the relevant stage a soil management plan which accords with the outline soils management plan.</i>”</p> <p>The Applicant has utilised a combination of ALC survey data and published data to inform the assessment of the effects on soils and agricultural land (within Chapter 20: Soils and agriculture, Volume 2 of the Environmental Statement (ES) [APP-061]) of the Proposed Development to provide a conservative assessment of the total area of best and most versatile (BMV) land potentially subject to effects due to the Proposed Development. The Applicant acknowledges that a site-specific ALC survey is required to confirm the ALC grade of the land affected by the Proposed Development and to confirm the soil types within the proposed DCO Order Limits to inform the stage specific SMPs and to implement commitment C-259 (Commitments Register [REP4-057]) in relation to the micro-siting of joint bays in land of the lowest ALC grade present, if this is possible.</p>

Table 2-20 Applicant's comments to Natural England's Deadline 4 submissions – Appendix N4 Natural England's Response to The Examining Authority's request for further information from Natural England arising out of Issue Specific Hearing 2

Ref	Deadline 4 submission			Applicant's comments	
2.20.1	Q No	Question Topic	Question	Natural England's Response	Applicant's comments
Agenda Item 2a Onshore ecology - Biodiversity Net Gain (BNG) including the adequacy of the Applicant's revised BNG Appendix 22.15 [REP3-019] and the wording of Requirement 14.					
Q2a-1	<i>BNG Appendix 22.15</i> Natural England		Provide a concise update the latest position on the updated BNG Appendix 22.15 [REP3-019] submitted by the Applicant at D3.	Please refer to Appendix J4 of our Deadline 4 submission.	The Applicant has provided a response to Deadline 4 Submission – Appendix J4C – Natural England's advice on Biodiversity Net Gain [REP4-095], please see Table 2-18 . The Applicant is providing a further update to Appendix 22.15: Biodiversity Net Gain Information, Volume 4 of the Environmental Statement [REP3-019] at Deadline 5.
Q2a-2			Explain whether the updated BNG Appendix 22.15 [REP3-019] provides a clearer distinction between the mitigation hierarchy and BNG and whether there are any remaining concerns regarding whether the mitigation hierarchy has been adequately demonstrated and followed in respect to biodiversity	Please refer to Appendix J4 of our Deadline 4 submission.	The Applicant has provided a response to Deadline 4 Submission – Appendix J4C – Natural England's advice on Biodiversity Net Gain [REP4-095], please see Table 2-18 . The Applicant is providing a further update to Appendix 22.15: Biodiversity Net Gain Information, Volume 4 of the Environmental Statement [REP3-019] at Deadline 5.
Agenda Item 2b Onshore ecology - Horizontal Directional Drilling including the adequacy and wording of commitments C-5 and Requirements 22 and 23.					
Q2b-1	<i>Commitment C-5 and the Worst Case Tested in the Environmental Statement</i> Natural England		It is stated at Deadline 3 [REP3-086], that there is no agreement with the Applicant that the 'worst-case scenario' has been expressed in the Environmental Statement (ES) [APP-063] as currently no on-site Ground Investigations have been carried out. The Applicant confirmed during ISH2 that the draft DCO [REP3-003] only seeks to consent to open cut in the locations specified in the crossing schedule. State the latest position on this issue in light of the fact the Commitments Register (CR) [REP3-049] would be a secured document in the draft DCO and in	Natural England will respond on this point at Deadline 5, when we have had the opportunity to review the Applicant's post hearing written submission of their oral case.	Noted, the Applicant awaits receipt of this response at Deadline 5.

Ref	Deadline 4 submission	Applicant's comments
	light of discussions held at ISH2 on this topic.	
	Agenda Item 2c Onshore ecology - Climping Beach SSSI including the adequacy and wording of commitments C-292, C-112, C-217, C-247 and Requirement 6(4).	
Q2c-1	<p><i>Wording of Commitment C-112 Climping Beach</i> Natural England</p> <p>Concerns were raised that Commitment C-112 of the CR does not include avoiding impacts to Climping Beach SSSI via unplanned activity and advised that the terms 'unless remedial action is required,' and 'predicted' are removed.</p> <p>Respond to the Applicant's explanation in ISH2 of the inclusion of these words within Commitment C-112.</p>	<p>Natural England understands that the Applicant intends to submit revised wording of C-112 at Deadline 4. Natural England will review this wording and the Applicant's post hearing written submission of their oral case, and provide an answer to this question as part of our Deadline 5 submission.</p> <p>The Applicant submitted revised wording for Commitment C-112 (Commitments Register [REP4-057]) at Deadline 4 and awaits Natural England's response at Deadline 5.</p>
Q2c-2	<p><i>Wording of Commitment C-217 Climping Beach</i> Natural England</p> <p>It is advised that the wintering period should include October to March inclusive.</p> <p>During ISH2 the Applicant confirmed it is seeking to update Commitment C-217 for Deadline 4. Respond to the Applicant's explanation on this issue at ISH2.</p>	<p>Natural England understands that the Applicant intends to submit revised wording of C-217 at Deadline 4. Natural England will review this wording and the Applicant's post hearing written submission of their oral case, and provide an answer to this question as part of our Deadline 5 submission.</p> <p>The Applicant submitted revised wording for Commitment C-217 (Commitments Register [REP4-057]) at Deadline 4 and awaits Natural England's response at Deadline 5.</p> <p>Further to this, the Applicant has updated Commitment C-217 to extend the programme to avoid the winter period from "between October and February" to "between October and March".</p>
Q2c-3	<p><i>Wording of Commitment C-247 Climping Beach</i> Natural England</p> <p>It is stated at Deadline 3 [REP3-088 App J2.5a published at D3], that to ensure that significant impacts to Climping Beach do not occur a commitment/consent condition should be included within a named plan to prevent the option of open trenching should HDD not be feasible or detailed ground investigation/models indicate the need for alternative options. It is stated that Commitment C-247 of the CR as it stands does not prevent damage to the SSSI in these scenarios.</p>	<p>Natural England's position remains unchanged at Deadline 4. But Natural England understands that an updated Commitments Register will be provided at Deadline 4. We will review any updates to C-247 and provide a response as part of our Deadline 5 submission.</p> <p>As stated in the Draft Development Consent Order [REP4-004] (updated at Deadline 5), the Applicant will be required to cable HDD cable installation for Works Nos. 6 and 7 at Climping Beach and would not be authorised to undertake open trenching in this location. Further to this, the Applicant updated Requirement 23 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5) to secure that the construction method statement for Work Nos 6 and 7 includes details for the depth of the horizontal directional drilling (HDD). This will require to be approved by the relevant planning authority following consultation with the statutory nature conservation body and Marine Management Organisation.</p> <p>The Applicant did not submit revised wording for Commitment C-247 (Commitments Register [REP4-057]) at Deadline 4 and awaits Natural England's response at Deadline 5.</p>

Ref	Deadline 4 submission		Applicant's comments	
Q2c-4	<p><i>Wording of Commitment C-292</i> Natural England</p>	<p>Does the fact the CR is now an approved document allay these concerns. If not, explain why not and what concerns are outstanding.</p> <p>Provide a comment, if required, regarding the newly added commitment C-292 in the CR.</p>	<p>Natural England advises that the wording is amended to ensure it is clear that, where at all possible, in the first instance the approach will be to avoid impacts. We advise that it should be made clear in the wording that this commitment does not apply to irreplaceable habitats, such as Ancient Woodland. We advise loss or damage to Ancient Woodland must be avoided.</p>	<p>The Applicant's view is that the commitment already covers avoidance as that is the basis of the mitigation hierarchy.</p> <p>With regards to ancient woodland, the Applicant notes that loss or damage of ancient woodland is being avoided through design, see commitments: C-6 and C-216 (Commitments Register [REP4-057]).</p>
<p>Agenda Item 2d Onshore ecology - Protected species including the adequacy of surveys for DCO application, adequacy of proposed mitigation and commitments in the draft DCO, post consent mitigation licences for protected species.</p>				
Q2d-1	<p><i>Protected Species Surveys</i> Natural England</p>	<p>Detailed advice was provided regarding surveys undertaken by the Applicant regarding the following potentially licensable species:</p> <ul style="list-style-type: none"> • Great crested newt • Otters • Water Vole • Bats • Dormouse • Badger, <p>into the examination at D3, Appendix J3 [REP3-084].</p> <p>Given that applications for protected species licences would be a potential post-consent stage process, inform the ExA whether there are any outstanding concerns at this stage of the process.</p>	<p>Natural England met with the Applicant on the 22nd May to discuss terrestrial ecology matters, including protected species.</p> <p>As stated in Appendix J4a of our Deadline 4 submission Natural England advises that the best course of action for the resolution of protected species matters would be to for the Applicant to submit draft protected species licence applications to Natural England for review via the Pre-Submission Screening Service (PSS). If Natural England agrees with the Applicant and proposed mitigation commitments, Natural England may provide</p>	<p>The Applicant notes these comments and confirms that a draft licence application for hazel dormouse (<i>Muscardinus avellanarius</i>) and water vole (<i>Arvicola amphibius</i>) has been provided to Natural England with the aim of receiving letters of no impediment. In addition, justification as to why a badger and bat licence application is not required at this stage has been provided and discussed with Natural England on 22 May 2024, 27 June 2024, and 02 July 2024. This will be reflected in Natural England's Issues and Risk Log which they intend to submit at Deadline 6.</p> <p>The Applicant has included a Requirement within the Draft Development Consent Order [REP4-004] updated at Deadline 5, which further secures pre-construction surveys for protected species and agreement of suitable mitigation (and licensing if applicable) with the relevant local planning authority and Natural England.</p>

Ref	Deadline 4 submission	Applicant's comments
Q2d-2	<p><i>Protected Species Licences</i> Natural England</p>	<p>Comment on whether there is any concern that a protected species licence for any of the protected species under discussion would not be possible for the Applicant to obtain post consent if required, drawing particular attention to bats, water vole, great crested newts, badgers, hazel dormouse and otters.</p>
Q2d-3	<p><i>Commitment C-214 -Great Crested newts</i></p>	<p>The response to written question TE1.18 [REP3-086] states that further information would be</p>

Letters of No Impediments to the progression of the Application, to ensure the ExA has the necessary certainty in this regard. Further engagement on this issue will therefore only be undertaken as part of direct communication between the external NSIP project team and Natural England's Wildlife Licensing Service (NEWLS). Natural England advises that all efforts should be made by the Applicant to obtain Letters of No Impediments from Natural England before the end of the Examination, and that these should be agreed before the Secretary of State makes the final consenting decision on the project.

Natural England will not be providing any further detailed advice within the Examination on licensable species unless they are a notified feature of protected site for which Natural England is the statutory consultee.

Please see answer to Q2d-1 above.

Please see answer to Q2d-1 above.

Please see the Applicant's response to **Q2d-1** above.

Please see the Applicant's response to **Q2d-1** above.

Ref	Deadline 4 submission		Applicant's comments
	<p>Natural England required to understand the full nature of the works covered by Commitment C-214 of the CR to determine its effectiveness. Explain what further information is required and what changes to C-214 are sought, if any.</p>		
Q2d-4	<p><i>Commitments Relating to Protected Species</i></p> <p>Natural England</p>	<p>Comment, if required, on the wording of the following Commitments in the CR relating to protected species:</p> <ul style="list-style-type: none"> • C-214 (great crested newts, see question Q2d-4) • C-209 (badgers) • C-210 (water voles and otters) and • C-232 (hazel dormouse) • C-211, C-291, C-105, C-200, C-115 (bats) 	<p>Please see answer to Q2d-1 above.</p> <p>Please see the Applicant's response to Q2d-1 above.</p>
Agenda Item 3a Offshore ecology - Underwater noise – general matters			
Q3a-1	<p><i>Outstanding Concerns Regarding the Worst- case Scenario for Piling and Securing the Maximum Design Scenario for Piling in the draft DCO / draft DML.</i></p> <p>Natural England</p>	<p>Comment, if required, on whether the replies given by the Applicant gave to questioning on these matters at the ISH2 allays concerns on these matters.</p>	<p>Natural England will respond on this point at Deadline 5, when we have had the opportunity to review the Applicant's post hearing written submission of their oral case.</p> <p>Noted, the Applicant awaits receipt of this response at Deadline 5.</p>
Agenda Item 3b Offshore ecology – Fish and Shellfish			
Q3b-1	<p><i>Level of Black Seabream Nesting in July</i></p> <p>Natural England</p>	<p>Comment on whether it is possible that the level of black seabream active nests in July could be comparable or greater than the preceding individual months.</p>	<p>Natural England advises that the conservation objectives of Kingmere Marine Conservation Zone (MCZ) apply for the full season (March-July inclusive) as stated within the conservation</p> <p>The Applicant maintains its position that a full piling restriction from 1 March to 31 July is disproportionate to the risk of an impact arising that could result in significant population level effects on nesting black seabream. This is due to the reduced spawning/nesting activity during July, when compared to March-June in the same year (as evidenced in a 2020 aggregates survey), therefore a lesser impact on the population breeding success in July is anticipated (as set out in Chapter 8: Fish and shellfish ecology, Volume 2 of the Environmental Statement [APP-049]).</p>

Ref	Deadline 4 submission	Applicant's comments
	<p>advice. This means that the objective that <i>'the population (whether temporary or otherwise) of that species occurring in the zone be free of the disturbance of a kind likely to significantly affect the survival of its members or their ability to aggregate, nest, or lay, fertilise or guard eggs'</i> applies equally to all months from March to July. We also highlight that this objective has a wider scope than just nesting. The aggregates survey data to date does show lower numbers of active nests in July, however black seabream are afforded the same protection under the conservation objectives regardless of the number of individuals/active nests. As detailed in Appendix N2 of Natural England's Deadline 2 submission, we advise that there is some inter-annual variability and it cannot be ruled out that the numbers of active nests in July may be higher in some years than others. Furthermore, a theory suggested by Dorset divers is that July spawning activity may also provide additional resilience to the population. Spawning has been previously observed at Dorset black seabream nesting sites in July after nests earlier in the year were washed out. We do not agree that there is sufficient evidence available to suggest that the impact of piling to black seabream during July would not result in</p>	<p>Acknowledging that some nesting is still potentially occurring in July (as evidenced by Natural England), the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), the provision of which is secured in Condition 11(1)(k) of the deemed Marine Licences (dMLs) (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5) sets out multiple mitigation measures during the month of July; these include the combination of double big bubble curtains (DBBC) and another noise mitigation measure, and a sequencing approach to piling starting in locations furthest from the Marine Conservation Zone (MCZ). Through July, piling will still be undertaken in the eastern part of the array.</p> <p>As set out in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), and secured in Condition 11(1)(k) of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5), from March to June piling will only be undertaken in the eastern part of the offshore Array area, and subject to mitigation using DBBC that can be combined with further noise abatement measures. Through the application of a variety of mitigation measures, which will be secured through implementation of an approved Sensitive Features Mitigation Plan, the Applicant is confident that piling operations will not hinder the Kingmere Marine Conservation Zone's conservation objectives.</p> <p>The Applicant reiterates that a full piling exclusion from March-July inclusive would also have significant issues for the practical development of the Proposed Development. The Applicant is in agreement with Natural England, regarding potential inter-annual variability in the exact timings of arrival and nesting, as detailed in Q10-1 of Deadline 2 Submission – Natural England's Response to the Examining Authority's Written Questions arising out of Issue Specific Hearing 1 on Environmental Matters [REP2-040].</p> <p>The Applicant reiterates, that the factors that can influence this variability are not well understood, and may include: water temperature, light penetration, day length, moon phase, plankton composition, the co-occurrence of neighbouring nests, and storm events, many of which can vary considerably in any given year and are not readily predictable in advance. The Applicant cannot therefore speculate whether there could be a greater number of active black seabream nests in future July months.</p>

Ref	Deadline 4 submission	Applicant's comments
Q3b-2	<p>Use of 135db as a Behavioural Threshold for Black Seabream <i>Natural England</i></p> <p>In respect to behavioural threshold for black seabream, which the MMO has suggested use of a 135db contour [REP3-076]. To clarify, if a 135db was used with amended restrictions and mitigation to reflect this (to ensure this noise threshold limit is not exceeded at the Marine Conservation Zone (MCZ) boundary, would Natural England be satisfied? Please see the document: <i>Applicant's Responses to Examining Authority's First Written Questions (ExQ1) - Appendix H - FS: Noise Thresholds for Black Seabream [REP3-051], Figures H-1 and H-2.</i></p>	<p>significant effects. Natural England's advice is that the conservation objectives would equally be hindered by underwater noise impacts from piling in July, as March-June.</p> <p>Natural England has consistently advised throughout the evidence plan process, our relevant representations, and our examination responses that we do not agree that there is sufficient evidence to support a threshold being established below which behavioral impacts on black seabream that could hinder the conservation objectives will not occur. Natural England, as the statutory nature conservation body, whose remit specifically relates to designated sites, do not support the use of the 135dB threshold in relation to black seabream that are 'aggregating, nesting, or laying, fertilizing or guarding eggs' within Kingmere MCZ. Our advice is that there is not a suitable threshold that can be drawn from the literature that relates specifically to disturbance of the spawning and nesting behaviors of black seabream which Kingmere MCZ is specifically designated for. Therefore, Natural England continue to advise that a full piling restriction from March to July is the only measure that would prevent the conservation objectives of</p>

Ref	Deadline 4 submission	Applicant's comments
Q3b-3	<p>Use of Monitoring to Ensure Noise Mitigation Efficacy <i>Natural England</i></p>	<p>As a backup to other mitigation and the use of zoning, comment on the possibility for there to be monitoring at the MCZ boundary of Kingmere MCZ to demonstrate that there would be no noise level exceeding any agreed threshold from piling. For example, if the agreed noise threshold was exceeded, then further adaptive management/mitigation may be necessary before further piling.</p>
		<p>Kingmere MCZ being hindered (see Appendix E4 of this submission for Natural England comments on ExQ1 Appendix H and I).</p> <p>We advise that because there is not a suitable threshold that can be agreed in relation to behavioral disturbance (Q3b-2) this approach does not provide a solution in relation to this impact. Our advice is that this proposal based on the thresholds of either 135dB or 141dB would not ensure that the conservation objectives of Kingmere MCZ will not be hindered due to behavioral impacts on black seabream.</p>
		<p>The Applicant reiterates their position, that a 141 dB SELss behavioural threshold, as defined by Kastelein <i>et al.</i> (2017) is suitably precautionary for the assessment of underwater noise impacts on black seabream, and to inform mitigation and consequently proposed monitoring.</p> <p>The Applicant has submitted an updated Offshore In Principle Monitoring Plan [REP4-055] 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:</p> <ul style="list-style-type: none"> • 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; • to validate mitigation zones implemented during piling; and • to validate compliance with the specified noise threshold proposed for black seabream at the Kingmere Marine Conservation Zone site, should one be implemented. <p>As detailed in the Offshore In Principle Monitoring Plan [REP4-055], the proposed monitoring includes the construction noise monitoring of four from the first twelve (12) piles to validate the assumptions made within the 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 results of the underwater noise monitoring to establish the efficacy of the mitigation measure(s) will inform the design of the piling exclusion zones to be implemented during the sensitive season for the black seabream feature of the Kingmere Marine Conservation Zone (MCZ). The noise levels recorded will be used to fine-tune the mitigation measures applied and/or refine the exclusion zones such that the noise levels modelled and set out within the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5) will not be exceeded at the MCZ. This enables an adaptive management approach to be adopted to provide for uncertainties on predicted noise levels reaching the designated black seabream feature and ensure the level of protection afforded through the adoption of the noise mitigation measures is delivered during the construction of the Proposed Development.</p>
Q3b-4	<p>Measures of Equivalent</p>	<p>It is understood that the Applicant is working towards submitting a</p>
		<p>Natural England highlight that there is still a mitigation</p>
		<p>The Applicant confirms that without prejudice options for Measures of Equivalent Environmental Benefit (MEEB) have been detailed, on a without prejudice basis, in</p>

Ref	Deadline 4 submission		Applicant's comments	
	Environmental Benefit Natural England	potential, without prejudice, Measure of Equivalent Environmental Benefit (MEEB). Comment on any parameters or minimum requirements for a MEEB relating to the effects on Kingmere MCZ relating to any potential impact to the Black Seabream nesting at this MCZ.	measure available (no piling from March to July inclusive) that would prevent the conservation objectives of Kingmere MCZ being hindered. Natural England awaits the submission of the Applicant's without prejudice, Measure of Equivalent Environmental Benefit (MEEB) case and will provide a response on this point at Deadline 5.	<p>Without Prejudice Measures of Equivalent Environmental Benefit Review [REP4-078], a Without Prejudice Stage 2 Marine Conservation Zone (MCZ) assessment [REP4-071] has also been submitted at Deadline 4. The options presented in the Without Prejudice Measures of Equivalent Environmental Benefit Review [REP4-078] will be discussed with Natural England and will inform a without prejudice implementation and monitoring plan. The Applicant has also submitted Schedule 18 - Measures of Equivalent Environmental Benefit (on a without prejudice basis) [REP4-081].</p>
Q3b-5	Seahorse Behavioural Effects Natural England	At the ISH2, the Applicant confirmed that they regard a behavioral noise threshold of 141db would be appropriate to be used for Seahorses. Provide a response. Furthermore, comment on whether seahorses would be likely to return to their habitat in the MCZs following any noise disturbance at the behavioral level.	Natural England notes that a behavioral threshold for seahorses has yet to be agreed. We will respond to this question Deadline 5, when we have had the opportunity to review the Applicant's post hearing written submission of their oral case, and the Applicant has provided further modelling.	<p>As detailed in the updated In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), the Applicant has now committed to the use of double big bubble curtains (DBBC) throughout the piling campaign. 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 (MCZs) within the vicinity of Rampion 2.</p> <p>Commitment C-265 has been updated accordingly to reflect this proposed mitigation. The updated commitment is as follows: <i>C-265: "Double big bubble curtains will be deployed as the minimum single offshore piling 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:</i> <ul style="list-style-type: none"> • <i>sensitive receptors at relevant Marine Conservation Zone (MCZ) sites and reduce the risk of significant residual effects on the designated features of these sites;</i> • <i>spawning herring; and</i> • <i>marine mammals."</i> <p>The mitigated impact ranges, afforded by the implementation of DBBC throughout the piling campaign, have been presented relative to the MCZs within the vicinity of Rampion 2, of which seahorse are a qualifying feature, in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5).</p> <p>The mitigated impact ranges from the implementation of DBBC (as defined using the 141 dB SELss disturbance threshold, which the Applicant maintains is an appropriate disturbance threshold for seahorse) further mitigate the underwater noise contours away from the MCZs designated for seahorse. Therefore, the Applicant is confident that with the implementation of DBBC throughout the piling campaign, the Conservation Objectives of the MCZs designated for seahorse will not be hindered.</p> </p>

Ref	Deadline 4 submission	Applicant's comments		
Q3b-6	<p>Use of Bubble Curtain Natural England</p>	<p>At the ISH2, the Applicant stated its intent to use a bubble curtain for noise mitigation throughout the year during the construction phase. The Applicant also stated that this would provide a minimum 16db noise reduction. If this is evidenced sufficiently, comment on whether seahorses, as features of the nearby MCZ areas, would not be affected by piling noise.</p>	<p>Natural England have raised concerns since the pre-application phase regarding the lack of evidence provided to date of the efficacy of noise abatement measures in the specific environmental conditions (such as water depth, geology, speed of local currents, wave height and wind speed) at the Rampion 2 site (see Appendix E4 of this submission).</p>	<p>The Applicant also wishes to highlight that the mitigated impact ranges from the implementation of DBBC, as defined using the overly precautionary 135 dB SELss threshold (the use of which the Applicant does not support), also do not overlap with the MCZs.</p> <p>The mitigated noise contours are presented in Figure 5.14 to Figure 5.17 of the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5).</p> <p>The Applicant awaits Natural England's position on the use of double big bubble curtains (DBBC) as underwater noise mitigation for seahorses as features of Marine Conservation Zones (MCZs) in the vicinity of the Proposed Development.</p> <p>As detailed in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), the Applicant has committed to the use of DBBC throughout the piling campaign. The implementation of this mitigation will further reduce the impact ranges of underwater noise to sensitive features such as seahorse as features of MCZs within the vicinity of Rampion 2.</p> <p>Furthermore, the Applicant confirms that additional work has been undertaken to provide a comparison of the environmental conditions at the Proposed Development with other projects where Noise Abatement Systems (NAS) have been deployed. The outputs of this work are detailed in Information to support efficacy of noise mitigation / abatement techniques with respect to site conditions at Rampion 2 Offshore Windfarm [REP4-067]. This report has been produced by the Institute of Technical and Applied Physics who have considerable experience monitoring noise abatement measures in Germany.</p> <p>The results of this work have been used to inform the underwater noise modelling of the proposed mitigations, as presented in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5). As evident in Figures 5.3 to 5.6 of Applicant's Post Hearing Submission – Issue Specific Hearing 1 Appendix 9 - Further information for Action Points 38 and 39 – Underwater Noise [REP4-061], and Figures 5.14 and 5.17 of In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), the use of DBBC throughout the piling campaign, effectively mitigates against underwater noise impacts, on seahorses as features of MCZs.</p>
Q3b-7	<p><i>Adaptive Management</i> Natural England</p>	<p>Based on the post-construction monitoring Conditions (No 18) within the Deadline 3 iteration of the draft Deemed Marine Licences [REP3-003], comment on what would be necessary if the results of post-construction monitoring indicated adverse</p>	<p>Natural England advise that should the post-construction surveys indicate effects greater than anticipated, then further measures, such as additional monitoring or mitigation may be required. It is not possible to fully</p>	<p>The Applicant has submitted an updated Offshore In Principle Monitoring Plan [REP4-055] at Deadline 4, which details the proposed monitoring requirements for sensitive benthic subtidal and intertidal ecology features (including black seabream nesting habitats), and fish ecology features (black seabream). Updates to the Plan have also been made in response to feedback from Natural England as provided in Appendix L1.</p> <p>As detailed in the Offshore In Principle Monitoring Plan [REP4-055], the requirement of post-construction sensitive habitat monitoring will be dependent on the findings of the pre-</p>

Ref	Deadline 4 submission	Applicant's comments
	<p>effects greater than anticipated. Explain whether there is a need for incorporation of more adaptive management provisions into the Conditions.</p>	<p>anticipate what measures may be required at this stage. However, we advise that the Deemed Marine Licence (dML) should not preclude them being required, should this situation arise.</p>
		<p>Natural England advise that no updates have been made to the In Principle Monitoring Plan in relation to fish to address our Appendix L1 deadline 1 response.</p>
		<p>construction surveys. Where chalk habitat, stony reef, peat and clay exposures and <i>S. spinulosa</i> reef are identified during the baseline survey, a single post-construction survey, specifically targeting those habitats and reefs identified in the baseline survey, will be undertaken as a check on their condition using the same methodology set out for pre-construction monitoring. If significant impacts are observed post-construction the potential requirement for further surveys will be agreed with the Marine Management Organisation (MMO) following review of the post-construction survey data.</p> <p>As detailed in the Offshore In Principle Monitoring Plan [REP4-055], the proposed underwater noise monitoring includes the construction noise monitoring of four from the first twelve (12) piles to validate the assumptions made within the 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.</p> <p>The results of the underwater noise monitoring to establish the efficacy of the mitigation measure(s) will inform the design of the piling exclusion zones to be implemented during the sensitive season for the black seabream feature of the Kingmere Marine Conservation Zone (MCZ). The noise levels recorded will be used to fine-tune the mitigation measures applied and/or refine the exclusion zones such that the noise levels modelled and set out within the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5) will not be exceeded at the MCZ. This enables an adaptive management approach to be adopted to provide for uncertainties in the predicted noise levels reaching the designated black seabream feature and ensure the level of protection afforded through the adoption of the noise mitigation measures is delivered during the construction of the Proposed Development.</p>
	<p>Agenda Item 3d Offshore ecology – Marine Mammals</p>	
Q3d-1	<p><i>Potential Impacts on the Harbour Porpoise Population trajectory</i> Natural England</p>	<p>It is advised in its risk and issues log at Deadline 2 [REP2-041] that the Applicant should provide further evidence on whether the latest number of harbour porpoise likely to be impacted by the Proposed Development would or would not affect the overall harbour porpoise population trajectory.</p> <p>The Applicant provided a detailed response to this at D3 in the Applicant's response to the ExA's first written questions [REP3-050] but Natural England's response to this point remains unchanged in Natural England's latest risk log issued at D3 REP3-087].</p> <p>Natural England do not agree with the rationale in the Applicant's response to Ref MM 1.6 presented in [REP3-050].</p> <p>In the response [REP3-050], the Applicant has stated that the number of harbour porpoise impacted from Tier 1-3 projects is below the number from Booth et al. (2017) that would lead to low probability of population impact. However, we do not agree that only Tier 1-3 projects should be used in the assessment. Indeed, the Applicant's original</p>
		<p>Please refer to the response to reference MM 2.2 in Applicant's Responses to Examining Authority's Second Written Questions (ExQ2) (Document Reference: 8.81) submitted at Deadline 5.</p>

Ref	Deadline 4 submission	Applicant's comments
	<p>Respond to the Applicant's response to Written Question MM 1.6 and set out the latest position on this point.</p>	<p>assessment was based on all Tiers (1 to 6). Tier 4-6 Projects include projects such as Dudgeon and Sheringham Extension Projects, and other Round 4 Projects. We consider these projects foreseeable with a high likelihood of development, and so we advise that they should be included in the cumulative effects assessment (CEA).</p> <p>We note that the study by Booth et al. (2017) undertook modelling over a 12-year period, whereas the CEA undertaken by the Applicant is over a 10-year period. We advise that this is simply a difference in the assessment timeframes. Offshore wind development will continue beyond the 10-year timeframe of the CEA; impacts to harbour porpoise will not stop after 10 years. We therefore advise that it is not reasonable to use this shorter timeframe as a reason why impacts will be lower.</p> <p>We note that the maximum number of animals predicted to be disturbed in the Applicant's CEA (45,897, for Tiers 1-6), is much higher than the numbers presented in Brown et al. (2023). We therefore advise that we cannot agree that Brown et al. (2023)'s results regarding population-level effects are applicable here. We advise that the higher number of</p>

Ref	Deadline 4 submission	Applicant's comments
		<p>animals disturbed in the CEA may lead to greater population impacts than predicted by Brown et al. (2023).</p> <p>In summary, we advise that the Applicant needs to provide further evidence as to why the number of animals predicted in the worst-case scenario of their CEA will not lead to population-level effects.</p> <p>We advise that the results from Nabe-Nielsen et al. (2018), whilst useful context, should not be relied upon in place of a robust project-specific assessment.</p>
	<p>Agenda Item 3e Offshore ecology – Offshore ornithology</p> <p>Q3e-1 <i>Hornsea Three and Four Decisions by the Secretary of State</i> Natural England</p> <p>The ExA is aware of the recent kittiwake derogation cases in England Hornsea Four (DESNZ, 2023) and Hornsea Three (BEIS, 2020)), where the Secretary of State has concluded the level of compensation required based on the mean rather than the upper 95% confidence interval.</p> <p>Comment, if required, whether there are any comments on the Hornsea Three and Four decisions where the Secretary of State took a different position to that advocated by Natural England.</p>	<p>It is important to account for sources of uncertainty in the design and scaling of compensatory measures, particularly where the measure is relatively novel, such as providing Artificial Nest Sites (ANS) for kittiwake. There are two entwined uncertainties – the level of impact and the likely effectiveness of the measure.</p> <p>Using the 95% upper confidence interval (95% UCI) impact value compared to the mean or central impact value (CIV) captures the uncertainty around the likely impact. These have been presented by several developers in ‘in-principle’ compensation submissions</p> <p>The Applicant regards uncertainty around the likely impact to be adequately covered through the precaution in the approach to apportioning (for example, apportioning of adults) and the assessment methodology (for example, the avoidance rates, flight heights, flight speeds and levels of nocturnal activity used in CRM). In addition, given that the site has no breeding season connectivity there is minimal functional connectivity to Flamborough and Filey Coast (FFC) Special Protection Area (SPA).</p> <p>The Applicant is confident that compensation can be delivered, if required, at an existing Artificial Nesting Structure (ANS) that is already constructed and hosting breeding kittiwake. As such, the Applicant considers concerns regarding the likelihood of implementation and rates of colonisation are unfounded. The Gateshead kittiwake tower is designed to support >200 kittiwake nests, with the ability to expand the design to support further nesting spaces if required. The Applicant notes that the Marine Recovery Fund may offer an alternative to the Applicant delivering compensation.</p> <p>As such, concerns regarding the likelihood of implementation, and rates of colonisation are unfounded. This structure supports space for 200 kittiwake nests, the Applicant considers that the uncertainties over the delivery of the required compensation are accounted for and the use of the 95% UCI to be an unnecessary additional layer of precaution in this case.</p>

Ref	Deadline 4 submission	Applicant's comments
	<p>e.g. Norfolk Boreas/Vanguard, East Anglia One North and Two, Sheringham and Dudgeon Extensions Project (SADEP). Whilst this may not always be reflected by SoS consent requirements, these submissions demonstrated that it would be possible for the proposals to deliver against a higher impact value than the CIV. This is relevant because ANS design is modular and therefore scalable – so that if further nest space provision turns out to be required, that is achievable. We also highlight that in the SADEP decision, the Secretary of State 'agreed and welcomed' the use of the 95% CI, and the Crown Estate Kittiwake Strategic Compensation Plan (KSCP) for Round 4 uses the 95% CI value to establish the potential requirements.</p> <p>Developers have also attempted to address the uncertainty regarding the effectiveness of the compensatory measures, which relates to whether the ANS will be colonised, at what rate, and the proportion of the nest spaces that will be used, given that no ANS to date has been fully occupied. As well as the use of numeric ratios (2:1, 3:1 etc.) to ensure that the required number of nest spaces are still provided should the ANS under-perform, developers have also looked at the number</p>	<p>The Applicant has provided additional information in the Kittiwake Implementation and Monitoring Plan [REP1-026] (updated at Deadline 5)</p>

Ref	Deadline 4 submission		Applicant's comments
		<p>and location of structures as a way of increasing certainty around success. The SADEP calculations also account for the fact that only a proportion of the kittiwakes produced by their ANS would recruit into the National Site Network, as opposed to other, non-designated colonies.</p> <p>Natural England therefore advises on a project's overall approach to uncertainty and how this relates to the scale of impact. By way of example, whilst Hornsea 3 requirements were scaled with respect to the CIV, they also proposed at least 4 structures in at least 2 English regions, each of which would provide the calculated number of nest spaces. This meant that a 4:1 ratio was provided for the CIV (and a ratio above 2:1 for the 95% UCI), and further resilience was provided by multiple structures/locations, which was entirely appropriate for an impactful project.</p>	
Q3e-2	<p><i>Kittiwake Compensation Quanta</i> Natural England</p> <p>The ExA would like to understand whether Natural England would consider changing its position regarding compensation numbers for kittiwakes. Provide a response.</p>	<p>Natural England welcomes the Applicant calculating the compensatory requirements based on the 95% UCI and based on ratios of 2:1 and 3:1. Natural England considers that should the Applicant secure sufficient nesting space for the number of pairs required to address the 95% UCI value at a ratio of 3:1 that would be a proportionate contribution,</p>	<p>Please refer to response Q3e-1 above.</p>

Ref	Deadline 4 submission		Applicant's comments	
			given the modest level of impact, and we would consider this matter resolved. Please also see our Deadline 4 response on the updated Kittiwake Implementation and Monitoring Plan submitted at Deadline 3.	
Q3e-3	<p><i>Compensation quanta for Guillemot and Razorbill</i> Natural England</p>	<p>The compensation quanta for guillemot and razorbill is presented in Table 8.1, section 8.2 of the Guillemot and Razorbill Evidence and Roadmap Compensation Plan [REP3-059].</p> <p>Comment on whether Natural England is in agreement with the Applicant regarding the compensation quanta for Guillemot and Razorbill at FFC and Farne Islands presented in Table 8.1.</p>	<p>Please see our response in Appendix B4 of our Deadline 4 submission. We consider that, as with kittiwake, ratios of 2:1 and 3:1 should also be provided within the Compensation Plan, and request that the 'Hornsea 4' method and the associated calculations are presented in full.</p>	<p>The Applicant has provided, on a without prejudice basis, the requested information using the 'Hornsea Four' method within the Deadline 3 submission Guillemot and Razorbill Evidence and Roadmap [REP3-060] (updated at Deadline 5) Table 8.1. Further detail on the calculation methods and the application of ratios have been provided in the Guillemot and Razorbill Evidence and Roadmap [REP3-060] (updated at Deadline 5).</p>
Q3e-4	<p><i>Guillemot and Razorbill Evidence and Roadmap Compensation Plan [REP3-059]</i> Natural England</p>	<p>Concisely summarise any outstanding concerns from Natural England regarding the proposed compensation measures, reporting and adaptive management measures in the Applicant's proposed Guillemot and Razorbill Evidence and Roadmap Compensation Plan.</p>	<p>Please see our response in Appendix B4 of our Deadline 4 submission. Natural England considers the approach proportionate to the predicted level of impacts on these species, but highlights the need to carry out site-specific monitoring in order to properly understand the sites in question and identify relevant and practicable measures to address the pressures identified.</p>	<p>The Applicant welcomes agreement from Natural England that the proposed compensation measure is appropriate and proportionate to the level of impact.</p> <p>Site-investigations completed during the 2024 breeding season will provide further insight into the disturbance reduction measures that will be applicable to each site. The results of these surveys have been provided in Appendix A of the Guillemot and Razorbill Evidence and Roadmap [REP3-060] (updated at Deadline 5).</p> <p>The Applicant is in conversations with other developers to progress this measure collaboratively.</p> <p>The Applicant has provided the proposed compensation measures on a without prejudice basis, and notes that, when published, the Marine Recovery Fund may provide an alternative.</p>
Agenda Item 6c Landscape Seascape and Visual Effects – Application of R1 Design Principles.				
Q6c-1	<p><i>Rampion 1 Design Principles</i> Natural England</p>	<p>The Commitment C-61 of the CR states that the Applicant will have regard to the Design Principles of Rampion 1 whereas Natural England at Table 1 [REP3-083] suggest Design Principles should</p>	<p>The design principles for Rampion 1 sought to limit the impact on highly sensitive receptors of the Sussex Heritage Coast (SHC) and parts of the South Downs</p>	<p>The Applicant considers that it has had, and is having, due regard to the design principles held in the Rampion 1 Design Plan (Commitment C-61). The design principles for Rampion 2 have also sought to limit the impact on the Sussex Heritage Coast (SHC) and parts of the South Downs National Park (SDNP) and have clearly incorporated the intent of the Rampion 1 design principles, including:</p>

Ref	Deadline 4 submission	Applicant's comments
	<p>apply regardless. Explain why this should be the case.</p> <p>National Park (SDNP), from Beachy Head to Birling Gap and down on to Cuckmere Haven Beach. The Environmental Statement for the proposed array has demonstrated further adverse impacts on these locations with the Rampion 2 turbines appearing to be nearly twice the height of those of Rampion 1. The lateral spread of the two arrays combined with the marked contrast in height of the turbines will dramatically degrade and harm the views out to sea particularly from Beachy Head to Cuckmere Haven Beach.</p> <p>It is Natural England's position that the design principles applied to the Development Consent Order (DCO) for Rampion 1 are entirely applicable to the design of Rampion 2. The reasons for including the design principles in the Rampion 1 DCO are equally as valid for Rampion 2. We continue to advise that no turbines should be constructed in the Rampion Zone 6 western array area because the impacts of the perception of a hybrid array (Rampion 1 and Rampion 2 viewed together in the seascape) will result in greater 'major significant' effects on the SHC part of the SDNP. We advise that the project will significantly harm the purposes of designation of the SDNP i.e. it will harm</p>	<ul style="list-style-type: none"> • limiting the Horizontal Field of View (HFOV) of wind turbine generators (WTGs) from the SDNP and Sussex Heritage Coast; • increasing the distance of WTGs from the Sussex Heritage Coast of the SDNP; • reduction in spatial extent of the Zone 6 area of the Order Limits, WTGs will be located further to the south-west than was proposed in the PEIR Assessment Boundary; and • providing clear sight lines through the wind farm separation zones of the WTG layout. <p>In addition to the SLVIA Design Principles, the Applicant submitted an Offshore Design Statement [REP4-137] at Deadline 4, which confirms that the WTG layout will provide a single line of orientation as a minimum (paragraph 6.3.4).</p> <p>The Applicant has made a number of representations that set out its position with regard to the lateral spread of the two arrays Deadline 1 Submission – 8.24 Applicant's Response to Relevant Representations [REP1-017], SLVIA Maximum Design Scenario and Visual Design Principles Clarification Note [REP1-037], Deadline 4 Submission – 8.77 Applicant's Response to Stakeholder's Replies to Examining Authority Written Questions [REP4-079] and why it cannot commit to developing only within the Extension Area west of Rampion 1 Deadline 1 Submission – 8.24 Applicant's Response to Relevant Representations [REP1-017] and Deadline 2 Submission – 8.47 Applicant's Responses to South Downs National Park Authority Deadline 1 Submissions [REP2-024]. Parts of the Zone 6 area to the south of Rampion 1 were previously considered acceptable as part of the Rampion 1 consented area and these areas to the south of Rampion 1 are considered to afford opportunity for development and are the optimal location within the Zone 6 area. The Applicant notes that Natural England considers no location in Zone 6 is acceptable, but notes that the South Downs National Park Authority (SDNPA) recognise that <i>"...if it were deemed to be unavoidable, the area to the south of R1 is likely to be less impactful"</i> Deadline 3 Submission – Responses to Written Questions (ExQ1) [REP3-071].</p> <p>The Applicant has also made a number of representations that set out its position with regard to the statutory purpose of the SDNP, including most recently at Deadline 4 in the Applicant's Response to Stakeholder Replies to Examining Authorities Written Questions [REP4-079] and Issue Specific Hearing 2: Further Information on South Downs National Park [REP4-063]. The Applicant has considered carefully the effects of the Proposed Development on the Special Qualities of the SDNP and it has reduced impacts on the Special Qualities through design, as set out in its post hearing submission at Deadline 4 Applicant's Post Hearing Submission – Issue Specific Hearing 2, Further Information on South Downs National Park Rev B [REP4-063] (as an update to Deadline 1 Submission, Applicant's Post Hearing Submission – Issue Specific Hearing 1, Appendix 5 - Further Information for Action Point 27 - South Downs National Park [REP1-024]), which include how it has sought to further the purposes of the SDNP with respect to each special quality; and in its Draft Offshore Design Statement [REP4-137], prepared in response to the Examining Authority's question</p>

Ref	Deadline 4 submission	Applicant's comments		
Q6c-2	<p><i>Rampion 1 Design Principle (iii)</i> Natural England</p>	<p>At the ISH2, the South Downs National Park Authority accepted the Applicant's response that Rampion 1 Design Principle (iii) is not relevant to the Proposed Development in response to Natural England's Deadline 2 submission at table 4.3 point 2.1.35 [REP3-052], and that Requirement 2 of draft DCO [REP3-004] adequately restricts the Wind Turbine Generators to a uniform height and rotor diameter. Explain why Rampion 1 Design Principle (iii) is relevant and explain why the Proposed Development should be considered as a hybrid scheme.</p>	<p>the natural beauty for which the area was designated as well as the special character of SHC. Please refer to Natural England's Relevant Representations and Deadline 3 advice for further explanation [REP3-083].</p> <p>Natural England will respond on this point at Deadline 5, when we have had the opportunity to review the Applicant's and SDNP's post hearing written submission of their oral case.</p>	<p>(DE1.1) [PD-009] to the Applicant to explain how the Proposed Development responds to 'Good Design'.</p> <p>Noted, the Applicant has no further comments on this matter at this time.</p>
Agenda Item 6d Seascape Landscape and Visual Effects – Assessment of Special Qualities and Statutory Purposes of the South Downs National Park				
Q6d-1	<p><i>Special Qualities</i> Natural England</p>	<p>Provide an explanation on why any harm to special qualities inevitably compromises the Statutory Purpose of the South Downs National Park in response to ExA WQ1 SLV1.5 [REP3-085].</p>	<p>The wording of EN-1 (2023) at 5.10.34 states 'The aim should be to avoid harming the purposes of designation...'. It should be noted that the word 'compromises' (as used in the previous version of EN-1) has now been superseded by 'harming'.</p> <p>The Applicant has concluded that significant adverse effects on landscape and visual receptors will occur from the proposed Rampion 2 offshore windfarm. The</p>	<p>Where a National Policy Statement (NPS) "has effect" Section 104(3) of the Planning Act 2008 outlines that the DCO Application must be decided in accordance with the relevant NPS. As is noted in paragraphs 1.6.2 and 1.6.3 of NPS EN-1 (Department for Energy Security and Net Zero (DESNZ), 2023a), in the case of this application, which was accepted before the designation of NPS EN-1 (DESNZ, 2023a), it is NPS EN-1 (Department of Energy and Climate Change (DECC), 2011a) which "has effect", with NPS EN-1 (DESNZ, 2023a) also being a relevant consideration in the decision making. It is therefore clear that Natural England is incorrect in asserting that the wording of NPS EN-1 (DECC, 2011a) has been superseded for the purposes of determining this application. Consequently, the wording of NPS EN-1 ((DECC, 2011a) as stated at paragraph 5.9.12 "The duty to have regard to the purposes of nationally designated areas" and "the aim should be to avoid compromising the purposes of designation" applies.</p> <p>The Applicant acknowledges the relevance of the "the aim to avoid harming the purposes of designation" in NPS EN-1 (DESNZ, 2023a), however it highlights that this policy does not require harm to be avoided, but instead to 'aim' to avoid and that the full policy at</p>

Ref	Deadline 4 submission	Applicant's comments
	<p>entirety of the affected area is defined as a Heritage Coast and located wholly within the SDNP. The Applicant has also concluded that these significant adverse effects will harm some of the special qualities of the SDNP. These special qualities articulate why the area was designated as a National Park and so they underpin the statutory purposes of the National Park. For the assessment of the special qualities and thus the assessment of effects on the statutory purpose of a designated landscape, the extent of geographical harm is irrelevant (Therefore, the portion of the SDNP affected is immaterial as the statutory purpose of the National Park applies to the entirety of the designated area. If an assessment concludes harm is predicted to occur to a single special quality, then it follows that harm will be caused to the natural beauty of the designation, and the purposes of designation. In any event, the extent of geographical harm in this case is clearly substantial, with widespread visual impacts, including across the entirety of the SHC. Furthermore, it should be noted that the coastal portion of the SDNP is a critical element of the natural beauty of the SDNP and the reason why it is defined as a Heritage Coast. This definition reinforces the value</p>	<p>5.10.34 goes on to state that if harm cannot be avoided, the aim should be to <u>minimise</u> adverse effects on designated landscapes (emphasis added below):</p> <p><i>"The aim should be to avoid harming the purposes of designation or to minimise adverse effects on designated landscapes, and such projects should be designed sensitively given the various siting, operational, and other relevant constraints".</i></p> <p>Natural England's response has therefore selectively quoted policy and as a result it's response is framed in the light of that selective quotation.</p> <p>The Applicant considers that it has had 'regard' to the statutory purpose of the South Downs National Park (SDNP). The SDNP has been at the forefront of its considerations during the design of the Proposed Development. Although harms cannot be avoided, it has aimed to minimise adverse effects on the SDNP. Natural England, in its relevant representation [RR-265] (paragraph 5.29), recognised that <i>"design changes introduced following the Section 42 consultation have reduced the adverse effects of the scheme on the portion of the South Downs National Park (SDNP) contained within the Sussex Heritage Coast (SHC)"</i>. The Applicant has applied the NPS EN-1 policy aim to <i>"minimise adverse effects on designated landscapes"</i>. The siting and design of the offshore elements of Rampion 2 have focused on minimising effects on the Sussex Heritage Coast in particular, acknowledging its value to the natural beauty of the SDNP and the panoramic views of the sea that are experienced as part of Special Quality 1.</p> <p>The Applicant considers that through the incorporation of design principles in the spatial extent of the proposed DCO Order Limits, it has minimised impacts and harm to special qualities of the SDNP and shown regard to its statutory purpose, insofar as is possible given the technical, economic and functional requirements to produce renewable energy. An alternative maximum design scenario (MDS) layout within the proposed DCO Order Limits cannot be proposed to further minimise harm, taking into account other constraints that the applicant has faced, while maintaining safety or economic viability of the application, in line with NPS EN3 (DECC, 2011a) (paragraph 2.6.208). Significant effects cannot be mitigated through a small reduction in the scale of the Proposed Development. A substantial reduction in the size of the Proposed Development would be likely to risk the viability of the project. The aim has been to reduce effects of Rampion 2 on the special qualities, insofar as possible around various siting, operational, viability constraints; and to avoid compromising the purposes of designation (to conserve and enhance natural beauty) in line with NPS EN-1 (DECC, 2011a) (paragraph 5.9.12).</p> <p>This key test imposed here by NPS EN-1 (DECC, 2011a), to aim to avoid harm or to minimise adverse effects, is distinct from the assessment of whether effects exist or are significant, as set out in the Environmental Statement. The Applicant considers that a significant effect on a defined special quality does not equate to compromising the statutory purposes. The Applicant does not agree that the statutory purposes are compromised at the point harm occurs i.e. if harm is predicted to occur to an aspect of a single special quality, then it does not follow that the purposes of designation will be compromised as a whole. This has been found to be a consistent finding of the Secretary of State across other recent Nationally Significant Infrastructure Projects (NSIPs), as</p>

Ref	Deadline 4 submission	Applicant's comments
	<p>of this stretch of the SDNP coastline.</p> <p>It is worth noting that although the mitigation measures contained within the Rampion 1 (R1) DML successfully reduced the visual influence of the turbines in views from the coastal portions of the national park, as defined by the SHC, they did little to lessen the visual effect from inland locations with the SDNP immediately to the north of the array. As a result, the visual influence of the R1 array is greater at Beacon Hill, Cissbury Ring and Highdown Hill than it is at Beachy Head and the beach at Cuckmere Haven. The additional westward lateral spread of R2 represents a substantial increase on the geographical spread of the R1 array. This will significantly increase the proportion of the seaward horizon occupied by turbines when viewed from inland locations within the SDNP. For example, locations to the west of viewpoint 19 at Highdown Hill from where uninterrupted views to the far seaward horizon are possible, would be completely lost should the R2 array be built. The larger turbines of R2 will have a far more pronounced impact to the wider SDNP by introducing structures across the majority of Sussex Bay and opportunities to</p>	<p>highlighted by the Applicant in its response to the Examining Authority's First Written Question SLV 1.5 in Table 2-15/Appendix F within Deadline 3 Submission – 8.54 Applicant's Responses to Examining Authority's First Written Questions (ExQ1) [REP3-051].</p> <p>The Applicant has considered carefully the effects of the Proposed Development on the Special Qualities of the SDNP and it has minimised impacts on the Special Qualities through design, as set out in its post hearing submission at Deadline 4 Applicant's Post Hearing Submission – Issue Specific Hearing 2, Further Information on South Downs National Park Rev B [REP4-063] which includes how it has sought to further the purposes of the SDNP with respect to each special quality through the measures secured in the Draft Development Consent Order [REP4-004] (updated at Deadline 5) and the Draft s106 Agreement with SDNPA [REP4-077].</p>

Ref	Deadline 4 submission	Applicant's comments
Q6d-2	Special Qualities Natural England	<p>Does the above (Q6.d.1) remain Natural England's view when taking account of the Applicant's answer to ExA WQ1 SLV 1.5 [REP3-051] Appendix F SLV: Examples of Permitted NSIPs affecting special qualities and statutory purpose of national landscapes.</p>
		<p>experience a sense of relative tranquility will be lost over a substantial area. Not only will the presence bring significant adverse effects to a larger proportion of the SDNP, the prime statutory purposes 'to conserve and enhance natural beauty' of CHAONB and loWAONB will also be significantly affected by the scheme.</p> <p>It is therefore Natural England's statutory advice that it is both incorrect and inappropriate to conclude the designation 'overall' is not adversely affected on the basis that only a portion of the designation is adversely affected by the turbines of Rampion 2. We advise that such a conclusion fails to uphold the purpose of designation.</p>
		<p>We note that the Applicant has put forward the merits in reviewing examples of permitted NSIPs affecting special qualities and states: <i>'The Applicant considers that these are a useful benchmark for informing the correct approach to concluding the effect upon special qualities and whether the statutory purposes of the designation are compromised. Whilst not a defined term applied in England in relation to National Parks, the Applicant suggests that considering the effect on 'overall integrity' is nonetheless a very clear way of expressing how the special</i></p>
		<p>The Applicant notes its response to Q6d-2 above. In addition, it considers that the concept of considering 'overall integrity' of the designation aligns with the approach to avoid compromising the purposes of designation, as per National Policy Statement (NPS) EN-1 (Department of Energy and Climate Change, 2011a) (paragraph 5.9.12). The Applicant considers that it is necessary to differentiate between a significant effect on special qualities compared to compromising the Statutory Purposes of designation. A significant effect on a special quality or qualities does not inevitably "compromise" the designation's purpose and/or integrity.</p> <p>The Applicant considers, however, that a single project could compromise the purposes of designation where there are particularly, permanent, material effects to qualities (including their extent, number, location and contribution to the wider designation). For example, this may occur where development directly effects the designation (i.e. is located within the designated area) and results in a considerably greater level of effect at closer proximity, where it results in a substantial loss of key landscape elements, experiential qualities or character change that is fundamental to the designated landscape. An example may be where the sheer size and extent of development results in severance of a designation, such that it functions in 'parts' rather than as a whole; so that the designation can no longer be experienced as whole, without passing through the development, and therefore</p>

Ref	Deadline 4 submission	Applicant's comments
	<p><i>qualities of a designated landscape come together to represent the whole or overall value. It is a useful approach to adopt when considering the degree of harm overall and how this might compromise the statutory purposes and duty for National Parks especially where there is a defined set of identifying Special Qualities.'</i></p> <p>Natural England disagrees with this conclusion for the reasons we set out in our response to Q6d-1. In addition, we advise that reliance on the concept of 'overall integrity' is flawed and endangers the purposes of designation. It is highly unlikely that a single application could ever harm the overall integrity of a protected landscape; harm arising from a development is only ever likely to impact a proportion or parts of a landscape. But it does not follow that such harm is not significant to the purposes of designation and suggesting otherwise merely seeks to downplay the purposes of designation for those locations adversely affected.</p> <p>We note that the examples provided by the Applicant pre-date the enactment of the enhanced duty on Relevant Authorities in respect of Protected Landscapes as introduced by Levelling Up and Regeneration Act 2023</p>	<p>results in adverse effects on the integrity of the designation, because the unity or soundness of the whole is impaired.</p> <p>Another example may be where a wind farm development results in the creation of a 'windfarm landscape' across a considerable area of the designation, which changes the inherent character of the designated landscape to one in which windfarms become the prevailing or defining influence of the designated landscape (rather than being viewed in its wider setting), for example, resulting in an 'Open Downs with Windfarms' landscape type within the South Downs National Park (SDNP) and a material change to its character and qualities.</p> <p>It is the Applicant's professional judgement that Rampion 2 does not breach that threshold, given the impacts assessed in Chapter 15: Seascape, landscape and visual impact assessment, Volume 2 of the Environmental Statement (ES) [APP-056], its location at distance outside the SDNP in the contextual seascape to the south, peripheral to other qualities of the designation, the retention of the expansive coastal setting and panoramic views of the sea, and considering the seascape context in which it is located, which includes the existing Rampion 1 offshore wind farm, the busy shipping lanes of the English Channel and the majority of the SDNP is separated from this seascape by an intervening non-designated urbanised coastal strip. Excepting the "<i>panoramic views to the sea</i>" referred to in Special Quality 1, no other special qualities of the SDNP would be significantly affected by the offshore elements of Rampion 2 (including other 'breathtaking views', the geology that underpins the special qualities and its diversity of landscapes).</p> <p>With regards to furtherance of the purposes of the SDNP, the Applicant has sought to further the purposes of the SDNP and provide compensation through the measures secured in the Draft Development Consent Order [REP4-004] (updated at Deadline 5) and the Draft s106 Agreement with SDNPA [REP4-077]. These discussions with regards to compensation in order to further the purposes of the SDNP are ongoing and will be reported back to the Examining Authority.</p>

Ref	Deadline 4 submission	Applicant's comments
	<p>Section 245. This duty falls on the Examining Authority and the Department for Energy Security and Net Zero Secretary of State and affects their decisions in determining the project and final content of the DCO. It states that Relevant Authorities must seek to further the purposes of protected landscapes.</p> <p>Natural England advises that Relevant Authorities should actively consider how the design of schemes has sought to further the purposes of a designation and how the design of the scheme sought to conserve and enhance the natural beauty of the designation. Whereas a simplistic reliance on good design and mitigation measures can deliver some benefits in terms of conservation (to 'look after') we advise they do not contribute to enhance (to 'make better') the natural beauty of a designation. The Examining Authority should be satisfied that the Applicant has included sufficient information in the design of the scheme and that the conditions of the Rampion 2 DCO have sought to include measures which activity enhance the natural beauty of the SDNP.</p>	
	<p>Agenda Item 6 Seascape Landscape and Visual Effects – Assessment of Cumulative Effects</p>	
<p>Q6e-1</p>	<p><i>Seascape Effects</i> Natural England If the Secretary of State were to accept the Applicants need case, alternatives case and that the</p>	<p>Natural England's remit within the PINs process as a Statutory Nature</p> <p>The Applicant has made a number of representations that set out its position with regard to why it cannot commit to developing only within the Extension Area west of Rampion 1 Deadline 1 Submission – 8.24 Applicant's Response to Relevant Representations</p>

Ref	Deadline 4 submission	Applicant's comments
	<p>seascape, landscape and visual effects of the Proposed Development had be reduced as far as possible, set out Natural England's contention that the Seascape effects alone should result in a recommendation to withhold the DCO for the Proposed Development.</p>	<p>Conservation Body as defined under the NERC Act 2006 (c 16) is as an adviser to the Examining Authority and the Secretary of State on all associated potential impacts of such a development, including those on nationally designated landscapes. Throughout the duration of this process, we neither object nor support an application but provide impartial, evidence-based advice on the levels of impacts to such sites, assessing whether all impacts have been appropriately addressed within the Environmental Statements.</p> <p>Natural England has consistently advised that the seascape effects will result in serious harm to the SDNP and SHC, we also consider there will be significant harm to the Chichester Harbour and Isle of Wight AONBs. We continue to consider that the only measure to meaningfully decrease the impacts on the SHC and SDNP is to not construct any turbines behind i.e. to the south of, the existing Rampion 1 array. Whilst excluding turbines from this location would represent an appreciable reduction in impact on the SDNP it does not negate impacts on the SDNP completely. To date, the Applicant has not demonstrated that removal of turbines from the Zone 6</p>

Ref	Deadline 4 submission	Applicant's comments
		<p>western array will result in an unviable project. Whilst excluding turbines from this location would represent an appreciable reduction in impact on the SDNP it does not negate impacts on the SDNP completely. To date, the Applicant has not demonstrated that removal of turbines from the Zone 6 western array will result in an unviable project.</p>
2.20.2		
2.20.3		


2.4 Affected Parties

Table 2-21 Applicant's comments to Aquind's Deadline 4 submissions

Ref	Deadline 4 submission	Applicant's comments
2.21.1	We write to you further to the issue of the Relevant Representation (RR-031) on behalf of AQUIND Limited and our letter dated 28 February 2024 (REP1-071).	Noted, the Applicant has no further comments on this.
2.21.2	The information contained in our previous letter regarding the matters agreed in principle between the parties remains accurate, however since the issue of that letter it has not been possible to agree the technical information to settle the required separation distances.	The parties have made significant progress in the drafting of a Co-operation agreement to regulate ongoing relations in the delivery of the respective projects. The substantive terms are settled and the parties have both produced technical notes regarding the information informing the required separation distances and remain in constructive conversation in the matter.
2.21.3	Moreover, there are some key commercial terms where the parties have not yet been able to agree a suitable position. AQUIND remains committed to entering into an agreement with the Applicant to regulate the interaction of both projects. However, as a responsible undertaker it will not accept any position which could mean the future safety and reliability of AQUIND Interconnector is compromised due to the Rampion 2 Proposals not being suitably located within its Order Limits in relation to the AQUIND Interconnector cables.	The parties continue the constructive conversation to conclude the Co-operation Agreement and significant steps have been made towards resolving the commercial terms.
2.21.4	For this reason, and noting the current stage of the examination of this project and the need to resolve matters before the end of the examination, we wish to put the ExA on notice that should sufficient progress not be able to be made in advance of Deadline 4 on 3 June 2024, AQUIND will submit a form of protective provisions for inclusion in the Rampion 2 Offshore Wind Farm DCO that will ensure the co-location of both projects in a safe and reliable manner.	A meeting was held on 20 May 2024 to discuss the parties' respective positions as set out in the technical notes referred to in paragraph 2.21.2 above, and the drafting of the Co-operation Agreement. In that meeting, legal representatives on behalf of Aquind indicated that there was confidence in settling the terms of the Co-operation Agreement (see Appendix F). As such it was not seen likely that a form of protective provisions for inclusion in the Rampion 2 Offshore Wind Farm DCO would be required, and Aquind's legal representatives were not expecting to submit a form of protective provisions to the Examination at Deadline 4.

Table 2-22 Applicant's comments to Emily Ball's Deadline 4 submissions

Ref	Deadline 4 submission	Applicant's comments
2.22.1	The Applicant is still not taking local resident's concerns properly, representations are only answered by reference to already submitted documents. We have read these documents and are asking questions about them, just referring to them again does not answer our questions. Throughout this process we are tired of generic answers and deserve the respect of being heard and having our local Cowfold concerns addressed properly. The sub station choice so close to Cowfold will be a disaster for the village and will cause traffic mayhem in the village on the over-capacity roundabouts (HDC Traffic Survey), A272 and Kent Street	The Applicant has no further comments on these paragraphs at this time.
2.22.2	The Open Hearings on the 13th April in the evening all had a similar theme from Parish Councils, to farmers to residents all talking about a lack of communication and constructive consultation and a 'bullying' technique being applied by the applicant	
2.22.3	I spoke at these hearings and have attached my speech below for reference. I would like answers to my questions in my speech please	
2.22.4	Rampion and RED are not a charity, they are submitting this application to make a vast amount of money and to satisfy their required return on investment. It is not fair that these returns come at the expense of other affected parties who lose money because of the application. Many peoples' lives will be badly affected from the farmer who spoke so poignantly, to Parish Councils and local residents especially around the Cowfold area – this is not fair, and it is not right.	
2.22.5	<p>Traffic issues – Kent Street and Cowfold</p> <p>I would like to confirm and have some clarity from the applicant by clarifying something about the accompanied site visit on Tuesday. I did mention this on the Hearings on the 16th May in Brighton under Section 7A but the client did not answer categorically</p>	The Applicant has no further comment at this time.
2.22.6	A59 – access – the Rampion representative said it was not an access off Kent Street when the ExA walked south down there –the ExA were indeed correct- it is on the plan – there is currently no existing gate so an access would need to be opened - hedgerow loss and impact on character and landscape of the lane	The Applicant confirms that the operational access A-59 is located south of the junction of Kings Lane with Kent Street as can be seen on sheet 32 of the Access, Rights of Way and Street Plans [APP-012] . H474 is shown as to have a length of 30m cleared in the Outline Vegetation Retention and Removal Plan (Document Reference: 8.87) (submitted at Deadline 5) as it is in a location where the transmission cables change direction. To allow the cables to change direction constrains the ability to avoid features such as hedgerows as the flexibility within the transmission cables is limited. The clearance in this location is not associated with access. Access A-59 is an operational access that would be taken through an existing gateway. The Applicant has reviewed the location and confirms an existing farm gate is present at the access location suitable for operational access requirements.

Ref	Deadline 4 submission	Applicant's comments
		
2.22.7	<p>Where we stood on Kent Street near the large tree and where we separated - the applicant said this was an access – it is not – this is the access point for the Enso battery storage site which the applicant has said is not related to them, but it is according to Companies House. It cannot be an access as due to the odd shape of the DCO land in this area as a sliver with non DCO land inside it, they have not included it here</p>	<p>The Applicant cannot recall where Mr Ball separated from the group. The Applicant is aware of the Enso proposals. The Applicant (Rampion Extension Development Limited) confirms that it does not hold an interest in the Enso Energy project and notes that any common shareholder entities would not influence the Applicant's proposals or its approach to the development of the Scheme. The Applicant notes that the irregular shape of the Order Limits to the south-west of Mr & Mrs Ball's property is drawn to facilitate vegetation management to main visibility splays under Works No. 13 for construction access A-61.</p>
2.22.8	<p>I then said the access point A61 is further north down the lane – but the applicant said it could be anywhere from the mapped A61 to where we were standing with the ExA – is this not fixed then, why not? Please confirm position of A61. We do not see the need for so many access points off Kent Street as discussed later in our representation.</p>	<p>The Applicant confirms the location of A-61 as presented on sheet 32 of the Access, Rights of Way and Street Plans [APP-012].</p>
2.22.9	<p>Rampion should have identified the problems with Kent Street and the A272 junction along with Cowfold traffic issues years ago. How can such a significant part of the construction phase have been left until Deadline 3</p>	<p>The Applicant has prepared a Construction Access Traffic Management Strategy for A272/Kent Street which is provided in Appendix D of Outline Construction Traffic Management Plan [REP4-045]. This strategy seeks to alleviate some of the safety concerns along the A272 and Kent Street during the construction phase.</p>
2.22.10	<p>The ExA had asked for traffic surveys for this area initially at ISH1(EV3-001) then for Deadline 2, the applicant then pushed this to Deadline 3. Instead of doing them for this deadline they used traffic data from a nearby application by Enso Energy battery storage (DC/24/0054) to be able to submit for the Deadline 3 date.</p>	<p>The Applicant made use of traffic data used within the Construction Traffic Management Plan for the Enso Energy battery storage facility (Horsham District Council planning application reference DC/24/0054) within the Outline Construction Traffic Management Plan [REP3-029] and Appendix 23.2: Traffic Generation Technical Note, Volume 4 of the Environmental Statement (ES) [REP3-021] submitted at Deadline 3. The data used within these documents excluded survey data during the period when the A272 was closed. Whilst the Applicant made best endeavours to complete traffic surveys ahead of Deadline 3 these were postponed until early May 2024 due to issues with third party suppliers outside of the control of the Applicant.</p>
2.22.11	<p>This Enso survey seems to be flawed with regard to vehicle classification, most of the vehicles recorded were listed as ARX class 1 and 2. This is for two wheelers such as motor bikes and motor cars. This is impossible as the A272 was closed for 3-4 days during the survey period (many photos have already been sent in regarding the lorries / coaches / large vehicles trapped on Kent Street and ruining the soft clay verges) – only a few days of data – not enough for such a large DCO application.</p>	

Ref	Deadline 4 submission	Applicant's comments
2.22.12	Only now in May 2024 are they doing traffic count surveys on Kent Street, the road tubes were laid on the night of the 7/MAY/24.	Further to this, traffic data collected on Kent Street in May 2024 has been included within Chapter 32: ES Addendum, Volume 2 of the ES [REP1-006], Appendix 23.2: Traffic Generation Technical Note, Volume 4 of the ES [REP3-021] and Outline Construction Traffic Management Plan [REP4-045] updates submitted at Deadline 5. This revised traffic data supports the conclusions of the ES and the traffic management strategy for Kent Street contained within Appendix D of the Outline Construction Traffic Management Plan [REP4-045] updated at Deadline 5 is still considered appropriate.
2.22.13	This shows a lack of due diligence and reinforces our belief that not enough original investigations were completed in choosing the substation site as has been mentioned by many local residents and Parish Councils in previous representations. Rampion only went down the road of least resistance hoping for little opposition from concerned locals with an incomplete consultation process around the Cowfold area.	The Applicant shortlisted two potential substation sites at Bolney Road/Kent Street and Wineham Lane North, both south of the A272 near Cowfold and Wineham. Following detailed studies, the Applicant decided to proceed with the Bolney Road/Kent Street site, which is now named 'Oakendene'. Although the site is a bit further from the existing National Grid Bolney substation, it was found to be better overall from an engineering and environmental perspective than the more constrained site at Wineham Lane North.
2.22.14	We will now have to wait for the current surveys to be completed so that we can comment at a later date.	The assessment of likely significant effects generated by the construction phase of the Proposed Development has been completed within Chapter 23: Transport, Volume 2 of the Environmental Statement (ES) [APP-064] and Chapter 32: ES Addendum, Volume 2 of the ES [REP1-006] and based upon robust estimates of construction traffic contained within Appendix 23.2: Traffic Generation Technical Note, Volume 2 of the ES [REP3-021] and controls contained within Outline Construction Traffic Management Plan [REP4-045] . These assessments showed that the Proposed Development would generate significant effects limited to Kent Street for the period associated with peak construction activities. The peak period for Kent Street are weeks 160-161, with construction traffic numbers dropping by more than 50% in the weeks either side.
2.22.15	<p>Please see below the comment from Cowfold PC submission at Deadline 3:</p> <p><i>"The proposed development is predicated on taking an already heavily utilised road network (specifically but not exclusively the A272, Bolney Road) to even more unacceptable levels of use. It is also noteworthy that Horsham District Council has undertaken a Horsham Transport Study (Stantec December 2022) as part of its Local Plan Review. This found that when the local plan scenario outputs were modelled, the junction capacity analysis showed at least one arm of the A272/A281 roundabout north of Cowfold junction AM Peak and one arm of the A272/A281 roundabout south of Cowfold junction PM Peak would be over capacity (meaning increases in delays experienced by travellers as flows increase), even with the embedded highway mitigation to be provided elsewhere on the district's highway network in the draft local plan." This Report by Stantec shows that the traffic at the mini roundabouts is beyond capacity during peak hours, defined in the report as 08.00-0900 and 1700-1800. In the morning, the congestion is the 7th worst in the whole district.</i></p> <p>These 2 roundabouts in Cowfold are already over capacity but the Applicant still states in document 8.54 (page 67) with reference to Cowfold and question AQ 1.2 by the ExA about the AQMA area in Cowfold village</p> <p><i>In relation to Cowfold, whilst commitments C-157 and C-158 (Commitments Register [REP-1-015]) discourage traffic from routeing through the Cowfold AQMA, it is a necessary part of the construction traffic route for the northern part of the onshore cable corridor. For robustness within Chapter 23: Transport, Volume 2 of the ES [APP-064] and Chapter 32: ES Addendum, Volume 2 of the ES [REP1-006], it has been assumed that approximately 25% of HGV traffic will route through Cowfold from the A24 and A272 east of the village centre when entering or exiting construction accesses at Oakendene, Kent Street or Wineham Lane. This accounts for the potential delivery of material or equipment to / from locations directly west of Cowfold or use of the Strategic Road Network and provides a robust assessment of effects within Cowfold. These commitments are also reflected in Table 5-1 of the Outline Construction Traffic Management Plan [REP1-010] which has been updated at the Deadline 3 submission and is secured via Requirement 24 of the Draft Development Consent Order [REP2-002]. The Outline Construction Traffic Management Plan [REP1-010] confirms the prescribed local HGV access routes for all sections of the onshore cable</i></p>	<p>The Applicant accepts the conclusions of the Horsham Transport Study but notes that these relate a forecast year of 2039 with and without traffic associated development contained within the emerging Local Plan. This assessment therefore reflects traffic conditions beyond the construction programme and therefore is not considered relevant to the assessments of the Proposed Development.</p> <p>The assessment methodology used by the Applicant and baseline traffic data has been agreed as acceptable by West Sussex County Council in their role as local highway authority for Cowfold. This was confirmed in their response to TA 1.2 of the Examining Authority's first set of Written Questions [REP3-073].</p> <p>In relation to the heavy goods vehicle (HGV) routing through Cowfold, the Applicant has stated several times that the assessment including 25% of HGVs routing through Cowfold is to provide a robust assessment of potential impacts and is not an indication of intended traffic routing. This is highlighted by the updates made the Outline Construction Traffic Management Plan [REP4-045] at Deadline 3 to include more stringent wording on the Commitment to C-157, which now states that HGVs will only route through Cowfold village centre for trips related to access A-56 or A-57 or where the use of locally sourced materials / equipment make its avoidance impracticable. This update to Commitment C-157 is also included the Commitment Register [REP4-057].</p>

Ref	Deadline 4 submission	Applicant's comments
	<i>corridor and Table 5-2 details specific local constraints and proposed management of construction traffic routes.</i>	
2.22.16	The Applicant is still just saying that Cowfold will not be an issue, so no need to investigate – we disagree as does the Cowfold Parish Council and HDCC. This is before one adds in all the sub-contractor vans which are not counted for in the Management Plan	As noted at Issues Specific Hearing 2 (ISH2) (May 2024), construction LGVs have been included in all assessment of the construction phase of the Proposed Development included within Chapter 23: Transport, Volume 2 of the ES [APP-064] and Chapter 32: ES Addendum, Volume 2 of the ES [REP1-006].
2.22.17	This is exactly the experiences of residents and previous representations made, and why the additional vehicles from Rampion WILL make a significant difference, as will the congestion caused by the vehicles turning on and off into the compounds, causing the traffic to back up into the AQMA	As noted in section 8.4 of the Outline Construction Traffic Management Plan [REP4-045] , a Delivery Management System will be used so that HGVs and construction deliveries to the construction sites are spread across the working day and to limit the number of construction vehicles on the network, particularly at peak times. It is also noted that, due to the proposed construction working hours, the majority of construction traffic movements to and from the Oakendene temporary construction compound and onshore substation will take place outside of the peak traffic hours. It is therefore not anticipated that construction traffic associated with the Proposed Development will lead to traffic congestion on the A272 and Air Quality Management Area (AQMA).
2.22.18	The applicant has now inserted The Kent Street Traffic Plan into the Outline Construction Traffic Management Plan at the end of a 267-page document.	The Applicant can confirm that an updated version of the Construction Accesses A-26, A-28, A-61 and A-64 Traffic Management Strategies was included within Appendix D of the Outline Construction Traffic Management Plan [REP4-045] . This contained further information on the proposed passing bays and how construction traffic will be managed in relation to pedestrian, cyclist and equestrian usage of Kent Street. The Applicant has also responded to individual comments below.
	<p>This new plan is as listed below with our comments in red</p> <ul style="list-style-type: none"> To facilitate access along Kent Street by construction traffic up to four passing places will be installed to provide adequate highway width for two-way traffic; The current passing places are in private ownership and so could be coned off if the landowners wanted too, also they are currently just compacted earth and mud and full of potholes. One landowner has already placed a large skip on one of the places and others could do the same. Passing place 4 will not be large / long enough for an HGV and has a water ditch up against it. The places are not long enough to take long lorries or multiple cars waiting. If a car is travelling along the A272 west towards Cowfold and wants to turn right into Kent Street, it will have to wait on the A272 until the entrance to Kent Street is clear. Also, if they then enter into Kent Street and suddenly see a lorry coming towards them there is nowhere to go except to reverse back towards the A272, this is highly dangerous. Also, vehicles and horse boxes do park in these laybys and walk / ride around the area so they may well be blocked at times causing problems for the traffic strategy – again the Applicant has not been listening to us HGV entry will be controlled via the Oakendene temporary construction compound at access A-62; HGV and LGV exit will be coordinated to ensure that they do not occur at the same time as HGVs entering Kent Street; Please explain how this will happen if there are no holding bays and a HGV is coming along the A272 turning right into Kent Street – it cannot wait as it would block the A272 and the passing places may be full with cars or horses HGV entry and exit will be controlled by banksman along Kent Street, up to and including accesses A61 and A-64; This will involve a banksman walking into the A272 to stop traffic, this is highly dangerous whether traffic is coming at 40 or 60mph. Also, banksman are usually a temporary measure (for days or weeks) 	<ul style="list-style-type: none"> The proposed passing places are within the West Sussex highway boundary and DCO Order Limits as confirmed as part of Action Point 38 of the Applicant's Response to Action Points Arising from Issue Specific Hearing 2 and Compulsory Acquisition Hearing 1 [REP4-074]. HGVs will be required to route to the Oakendene compound prior to entering Kent Street. Entry will be controlled via the Oakendene compound (Access A-62) via radio as is common practice for construction sites. This will ensure that HGVs are called into site only when there are no LGVs or HGVs exiting the site. Once an HGV has been called into site from the Oakendene compound, no LGVs or HGVs will be permitted to exit the site until the incoming HGV has completed its journey. Further information on these controls is contained within Appendix D of the Outline Construction Traffic Management Plan [REP4-045] updated at Deadline 5. Kent Street will not be used by construction traffic for the full construction programme, with the current programme estimating that access will be required for 38 weeks in total, albeit this will not be continuous. Average speeds were on Kent Street were recorded as 28mph during traffic surveys completed in May 2024 and summarized within the Appendix 23.2: Traffic Generation Technical Note, Volume 4 of the ES [REP3-021] and controls contained within Outline Construction Traffic Management Plan [REP4-045] updated at Deadline 5. Given the low traffic speeds, low traffic flow, good visibility along Kent Street, and additional warning signs that would be erected during the construction phase the use of banksman is not considered to be present a health and safety risk. Furthermore, these banksmen would be fully trained in the Community Safety Accreditation Scheme (CSAS) to direct traffic on the public highway. <p>The Applicant notes that West Sussex has accepted the principle of temporary speed limits within their Deadline 4 submission [REP4-086], noting that the exact locations and extent will need to be agreed through stage specific construction traffic management plans. These would</p>

Ref	Deadline 4 submission	Applicant's comments
	<p>and not for years of construction. The Applicant will have to investigate the H&S measures of using banksmen on such a fast road which often sees cars travelling over 60 mph.</p> <ul style="list-style-type: none"> General traffic will also be controlled by banksman whilst HGVs are entering or existing access A-61 or A-64; for how long?? Banksmen are only to be used as a temporary measure not for weeks and up to a year <p>A temporary speed limit reduction from the current national speed limit to 40mph along the A272, between east of Cowfold to Bolney, a distance of 4km. A speed limit change from 60mph to 40mph is significant – not temporary as many years of construction works. WSCC will have to advise on the implications of this reduction on the 2 x roundabouts in Cowfold and also junctions onto the A23. It should also be noted that traffic leaving Bolney at 40mph would see no reason for it once a mile past Bolney and due to the flat straight road cars would speed up as they reach Kent Street which will be dangerous for cars and banksmen</p>	<p>be development in accordance with Outline Construction Traffic Management Plan [REP4-045] updated at Deadline 5 as secured by Requirement 24 of the Draft Development Consent Order [REP4-004].</p>
2.22.19	<p>Typically, a speed limit reduction would need to be supported by survey data demonstrating that the 85th percentile speed is lower, or the provision of a suitable traffic calming scheme or similar which changes the environment and therefore the behaviour of drivers. A measure such as average speed checks should be considered to enforce the temporary speed limit. Why are there no details about this, drivers would slow down after Bolney but then see no reason for the speed change and so speed up just as it becomes important to slow down for all the access points and turning places near Kent Street.</p>	
2.22.20	<p>If some of the HGV lorries need a banksman to turn on the A272 as it takes up both sides of the carriageway – how will the same lorry turn on Kent Street which is much narrower with soft clay verges either side?</p>	<p>An updated version of the Construction Accesses A-26, A-28, A-61 and A-64 Traffic Management Strategies was included within Appendix D of the Outline Construction Traffic Management Plan [REP4-045]. This included additional swept path analysis showing construction traffic movements to / from the A272 and along Kent Street.</p>
2.22.21	<p>Why have detailed designs for access A61 and A64 not been provided to date and only to be completed post decision. These access points will greatly affect the lane and views onto the countryside and change the countryside nature of the lane, there will be visual impacts from these 2 new junctions</p>	<p>Please refer to the response to Action Point 47 Applicant's Response to Action Points Arising from Issue Specific Hearing 2 and Compulsory Acquisition Hearing 1 [REP4-074].</p>
2.22.22	<p>The applicant says that pedestrians will be told of traffic by a banksman to "allow them to adjust their positioning". What does this mean as people, horses / dogs walk along the road, the verges are too vegetated in Summer for movement and too wet in Winter to allow change – please explain what this means?</p>	<p>An updated version of the Construction Accesses A-26, A-28, A-61 and A-64 Traffic Management Strategies was included within Appendix D of the Outline Construction Traffic Management Plan [REP4-045] providing additional information on pedestrian, cyclist and equestrian controls. This includes the following measures for Kent Street:</p>
2.22.23	<p>The Applicant then gives full of the Traffic Management Strategy for A61 and A64 at the end of the document in Appendix D (page 222 of 267)</p>	<p>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).</p>
2.22.24	<p>For The Kent Street Traffic proposal, we would also like to add to our comments</p> <ul style="list-style-type: none"> Table 3-2: the sheer size of these vehicles should be noted, and their alarming passage down tiny Kent Street past walkers, cyclists and the many horses and other animals imagined. How can these vehicles wait on the small passing places envisaged, and how will they turn round for the return journey once on the haul road? This whole Kent Street proposal is ill thought out and cobbled 	<ul style="list-style-type: none"> Construction heavy goods vehicles (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.

Ref	Deadline 4 submission	Applicant's comments
	<p>together to appear plausible but takes no real account of what the reality actually is.</p> <ul style="list-style-type: none"> How will the large vehicles and tankers get in and out of Kent Street access points A61 and A64 – no swept path analysis for these entrances, narrower road than A272 – show swept path analysis for these 2 x junctions Is the bridge over the culvert wide enough to take them, the road is only 2.85m over this culvert – the same width as the proposed lorries and tankers. Rampion have not even surveyed this narrow culvert and seen the bad state of the road and soft verges. May be impossible for the largest lorries to pass. Also, as per previous representations WSCC need to comment on weight of traffic allowed to pass over this simple culvert Can people reasonably be asked to move off the road when HGVs come along on Kent Street (pedestrians and animals)? Kent Street has drainage filed ditches either side of the road so road widening is not possible No comment by the applicant on whether Kent Street is wide enough or strong enough to take all this extra traffic The fact the new Kent Street traffic survey will not be available until July is totally unacceptable for such an important part of the traffic in the area Can 2 HGVs pass each other in the passing places – the lane is not wide enough – the passing place near the culvert is too small and cannot be expanded, the passing place nearest to the A272 (large skip been there for months) is blind from the road, hence only 2 x places of use. Further details of the Kent Street widening should be provided including a minimum carriageway width to determine whether two large vehicles can pass 	<ul style="list-style-type: none"> 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. 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. 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. The same strategy will be adopted for HGVs exiting accesses A-61 and A-64. <p>Swept path analysis has been completed within Construction Accesses A-26, A-28, A-61 and A-64 Traffic Management Strategies in Appendix D of the Outline Construction Traffic Management Plan [REP4-045]. This has showed that low loaders, as the largest construction vehicle required to use Kent Street, can safely enter and exit the proposed construction access junctions.</p> <p>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 Draft Development Consent Order [REP4-004] (updated at Deadline 5). The Outline Construction Traffic Management Plan [REP4-045] updated at Deadline 5 also 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 Draft Development Consent Order [REP4-004] (updated at Deadline 4), means that the potential for carriageway repair is recorded at an early stage, thereby reducing the potential for failure and need for emergency repair works.</p> <p>The Applicant can confirm that passing places proposed within the Construction Accesses A-26, A-28, A-61 and A-64 Traffic Management Strategies in Appendix D of the Outline Construction Traffic Management Plan [REP4-045] provide adequate width for two HGVs to pass each other. It is noted however that this should not be required given the managed strategy proposed for Kent Street.</p>
2.22.25	<p>Survey requested</p> <p>We think it is imperative for the Applicant to have a survey of non-motorised usage of the lane, from horses to pedestrians to cyclists to dog walkers, the lane is mostly used by these people and animals and no survey or implications have been looked at to date - this is unacceptable</p>	
2.22.26	<p>Large agricultural vehicles use the lane alot due to the number of farms and equestrian farms on the lane. These vehicles often tow trailers and machinery behind them – it is very hard for these vehicles to reverse easily, management of the lane will be impossible with the above categories and a strategy needs to be explained for all users of the road before we have an accident on the lane</p>	<p>The assessment of likely significant effects generated by the construction phase of the Proposed Development has been completed within Chapter 23: Transport, Volume 2 of the Environmental Statement (ES) [APP-064] and Chapter 32: ES Addendum, Volume 2 of the ES [REP1-006] and based upon robust estimates of construction traffic contained within Appendix 23.2: Traffic Generation Technical Note, Volume 4 of the ES [REP3-021] and controls contained within Outline Construction Traffic Management Plan [REP4-045]. These assessments concluded that the Proposed Development would generate significant effects to users of Kent Street in relation to pedestrian amenity, pedestrian delay and fear and intimidation. It is therefore not considered necessary to complete additional surveys of non-motorised users.</p>

Ref	Deadline 4 submission	Applicant's comments
2.22.27	Regarding the receptors identified as potentially requiring assessment we note that cyclists have not been included as a receptor on any links (including the Cowfold links 23, 24, and 25) despite being identified in table 23-10 as a receptor. Given the rural nature of the site there is potential for cyclists to use the carriageway for leisure purposes and consideration should be given to the impact the construction movements would have on them.	The assessment methodology used by the Applicant and baseline traffic data has been agreed as acceptable by West Sussex County Council in their role as local highway authority for Cowfold. This was confirmed in their response to TA 1.2 of the Examining Authority's first set of Written Questions [REP3-073] .
2.22.28	In addition, we note the existing playground adjacent to the A272 at the Cowfold recreation ground, which would represent a high sensitivity receptor together with the wider recreation ground, though we note no receptor is located in its vicinity. A receptor in this location would pick up vehicular movements through both receptor 24 (south of Cowfold) and Receptor 25 (the centre of Cowfold) travelling towards the Compound.	
2.22.29	<p>Monitoring Report</p> <p>If the DCO is approved, we would request a traffic monitoring report to be produced at least every 6 months so that consultees (especially Parish Councils and WSCC) can see progress and that traffic is moving as per modelling with sanctions in place for non-compliance</p>	Information the monitoring strategy for construction traffic is contained within Section 9.2 of the Outline Construction Traffic Management Plan [REP4-045] updated at Deadline 5. Further details related to the requirement for monitoring reports will be provided as party of stage specific construction traffic management plans, developed in accordance with the Outline Construction Traffic Management Plan [REP4-045] updated at Deadline 5, secured by Requirement 24 of the Draft Development Consent Order [REP4-004] .
2.22.30	In addition, we note that there appears to no enforcement measures in place should the Construction Management Plan not be adhered to for a prolonged period of time. The enforcement section limits RED to monitoring and implementing corrective measures to "resolve, redress and enhance service performance, which is in breach of the standard within the Outline CTMP"44 and that RED will require that the appointed contractor includes the commitments set out within the commitment register. We would suggest that continual (and evidenced) disregard for the commitments made within the CTMP should result in a fine or similar.	
2.22.31	<p>Request for information on traffic numbers</p> <p>The vehicle traffic numbers seem low compared to the vehicle numbers for Rampion 1 even though Rampion 2 is many times bigger.</p>	The construction traffic calculations used within Appendix 23.2: Traffic Generation Technical Note, Volume 4 of the Environmental Statement (ES) [REP3-021] (updated at Deadline 5), Chapter 23: Transport, Volume 2 of the ES [APP-064] and Chapter 32: ES Addendum, Volume 2 of the ES [REP1-006] (updated at Deadline 5) are based on the Proposed Development's outline design to date. Due to this, a highly conservative approach has been taken to assess the worst-case scenario for potential traffic impacts. The traffic calculations are sensitive to certain activities, for example the construction of temporary accesses and haul roads along the cable corridor will require the import and then export (on reinstatement) of stone for the temporary surface. For these activities conservative values have been used to determine the traffic volumes.
2.22.32	Rampion 2 traffic figures relate back to the Bill of Quantities, but we have not seen any details on this Bill and it has not been scrutinised. This Bill could dramatically favour the applicant without outside bodies looking into its details.	
2.22.33	Only local villages and local people will be the ones to suffer from an increased number of vehicles if this Bill underestimates the amount of journeys.	
		In the case of the temporary accesses and haul roads, a conservative average 6m width has been assumed to calculate the volume of stone and therefore the associated heavy goods vehicles (HGVs) movements. The width of a large proportion of the temporary accesses and haul roads will be less than this and include appropriately spaced passing places. It is noted that construction and reinstatement of temporary accesses and haul roads account for one third of all HGV movements on public roads (cable route and substation). Therefore, a reduction in average width will impact the HGV movements across the Proposed Development.
		Stone volumes required for the base of the temporary construction compounds are calculated on the compound areas presented in the works plans at each location. The size of each

Ref	Deadline 4 submission	Applicant's comments
		<p>compound will be smaller than these allocated areas (which also allow for soil storage, drainage etc).</p> <p>The same conservative approach has been taken with lights goods vehicles (LGVs). Workers travelling to site are assumed to travel to the compounds individually (1 occupant per car) and then travel 5 occupants per minibus to site. However, car sharing and even hotel pickups are common practice and the Applicant will seek to arrange this to reduce the number of light vehicle journeys across the Proposed Development. During detailed design the traffic volumes will be able to be refined taking into account detailed design of crossings, the exact cable route, known Contractor equipment, manpower requirements and required compound sizes.</p> <p>The Applicant is confident that the traffic volumes calculated and used within Appendix 23.2: Traffic Generation Technical Note, Volume 4 of the ES [REP3-021] (updated at Deadline 5), Chapter 23: Transport, Volume 2 of the ES [APP-064] and Chapter 32: ES Addendum, Volume 2 of the ES [REP1-006] (updated at Deadline 5) are robust and that refinement will reduce the traffic numbers.</p>
2.22.34	<p>Cratemans Farm – Ecology Report CowfoldvRampion have instructed an ecology survey on the land around Cratemans farm which will be presented for Deadline 4.</p>	<p>The Applicant has provided a response to this report as requested by the Examining Authority in Applicant's Responses to Examining Authority's Second Written Questions (Document Reference: 8.81) submitted at Deadline 5.</p>
2.22.35	<p>The report believes that Rampion have played down the important ecological significance in this area as they have on other parts of the DCO land. The 'Green Lane' as visited by the ExA is also analysed as highly significant.</p>	
2.22.36	<p>Please see submission by CowfoldvRampion for more details</p>	
2.22.37	<p>Hearings 16th May Brighton Applicant's response to issues regarding item 7A Kent Street Traffic Plan Chris Williams for the Applicant mentioned in the hearings that all traffic for the Kent Street access points would firstly go to the Oakendene compound, turn around and then wait for radio permission to leave and travel to Kent Street. This new strategy was mentioned in the Deadline 3 document but was not part of the Kent Street Traffic Plan submitted at deadline 3 by the applicant, it was in another different document – very hard for residents to track items as discussed by the ExA. Why has this only now been added at such a late date. This will effectively double traffic flow counts for cutting across the A272, firstly to enter the compound, then leave and then drive to A272 / Kent Street junction and cut across again. Also as per questions asked on the day by the ExA we need more granular information of how can this work with radios (or other communication device as mentioned by Mr Williams) and the time lag for permission from the compound to entering Kent Street when other non-Rampion vehicles could have entered or be waiting for entry into Kent Street. This plan will not work</p>	<p>An updated version of the Construction Accesses A-26, A-28, A-61 and A-64 Traffic Management Strategies was included within Appendix D of the Outline Construction Traffic Management Plan [REP4-045]. This included further information on the management strategy for HGVs using Kent Street and a strategy for maintaining safe pedestrian, cycle and equestrian access. These points were also summarised by the Applicant's response to Action Point 41 and 42 of the Applicant's Response to Action Points Arising From Issue Specific Hearing 2 and Compulsory Acquisition Hearing 1 [REP4-074].</p> <p>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 Draft Development Consent Order [REP4-004] (updated at Deadline 5). The Outline Construction Traffic Management Plan [REP4-045] updated at Deadline 5 also 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 Draft Development Consent Order [REP4-004] (updated at Deadline 4), means that the potential for carriageway repair is recorded at an early stage, thereby reducing the potential for failure and need for emergency repair works.</p>
2.22.38	<p>We agree with questions asked by the ExA regarding Kent Street</p> <ul style="list-style-type: none"> Current state of the road is not able to withstand such traffic and heavy traffic, how can this road be reinstated without closure. How can the road widening / 	

Ref	Deadline 4 submission	Applicant's comments
	<p>passing places be constructed without closing the road – items not thought about from the Applicant</p> <ul style="list-style-type: none"> No consideration by the Applicant of how pedestrians / cyclists / dog walkers / horse riders can use the lane. The applicant only said that they would be warned a large vehicle was coming and it was up to individuals to assess the risk. Not sure how this would work and where would horses go. There is a dog walking business on the lane and many equestrian businesses <p>No details or swept path analysis for Access A61 or A64 – seems impossible due to width of Kent Street and only a single carriageway, OR increased widening on access point which would result in more hedge loss and also a dramatic effect of the setting and landscape along Kent Street which is currently a quiet rural country lane</p>	<p>Swept path analysis has been completed within Construction Accesses A-26, A-28, A-61 and A-64 Traffic Management Strategies in Appendix D of the Outline Construction Traffic Management Plan [REP4-045]. This has showed that low loaders, as the largest construction vehicle required to use Kent Street, can safely enter and exit the proposed construction access junctions.</p>
<p>2.22.39</p>	<p>Applicant's response to written questions – 8.54 - REP3-051 Reference LR 1.3 (page 45) Applicant states there are 3 properties currently marketing a property affected by the Applicant's proposal, ours is one of them The applicant has not engaged with us on our issues and does not give an answer to our concerns.</p> <p>Our property has been marketed 'off market' for over 9 months and has been on the open market with agents since Feb 2024, with no firm offers to date. We would like to discuss with the Applicant the loss of value we are experiencing but the applicant has never engaged with us on this matter</p>	<p>The Applicant has responded to the Land Interest's queries and concerns via email on 9 May 2024. A further response was also summarised within the Applicant's response to the Land Interest submitted at Deadline 4, Table 2-23, paragraph 2.1.6 within Applicant's Comments on Deadline 3 Submissions [REP4-070].</p> <p>The Applicant also submitted a plan indicating the location of the landholding relative to the proposed DCO Order Limits (Appendix D within Applicant's Comments on Deadline 3 Submissions [REP4-070]). The property which has been openly marketed since February 2024, is located within the south-western corner of the landholding, directly to the east of Plot 33/6.</p> <p>There is a sliver of land at the landholding's western border which abuts the eastern boundary of Kent Street. This is included within the Order Limits as Works No.13 (Temporary Construction access) and it is required for a visibility splay. The Applicant sent Key Terms to the Land Interest on 16 April 2024 to seek to negotiate an agreement for the temporary use of that narrow strip of land but the Land Interest has not responded on these. Instead, as noted in the Land Interest's Deadline 4 submission, the Land Interest wishes to engage solely on a perceived loss in value due to an alleged impact of the draft DCO on the property. The Applicant has explained to the Land Interest that there is no current basis on which to substantiate a claim for this.</p> <p>In the circumstances, the Applicant is unable to progress negotiations in respect of the visibility splay any further.</p>
<p>2.22.40</p>	<p>Reference LR 1.8 Question b (page 48) The Applicant is still stating that there is a strong and compelling case in the Public interest for the Proposed Development to be delivered.</p> <p>We still question this, as per our Deadline 3 submission, the National Grid ESO report Beyond 2030 on the future of the National Grid and its planned £58bn investment to make the grid carbon neutral by 2035. The Applicant's proposal will only be contributing to the Public interest for a short time but the losses to individuals and to ecology will be for ever – the balancing act is not proportionate at this time</p>	<p>The Applicant's view is that there is a strong and compelling case for the Proposed Development.</p> <p>Part 3 of the National Policy Statement for Energy 2011 confirms at Paragraph 3.1.1: "<i>The UK needs all the types of energy infrastructure covered by this NPS in order to achieve energy security at the same time as dramatically reducing greenhouse gas emissions.</i>" Paragraph 3.1.3 sets out that applications for Development Consent Orders should be assessed: "<i>on the basis that the Government has demonstrated that there is a need for those types of infrastructure and that the scale</i>" and speaks of the '<i>urgency</i>' of that need.</p>

Ref	Deadline 4 submission	Applicant's comments
		<p>The National Policy Statement for Energy (EN-1) 2023 was designated after the submission of the Applicant, but as a recent statement of Government policy is considered to be an important and relevant consideration in the determination of the application. The document confirms at Paragraph 3.3.58 that there is an: <i>“urgent need for new (and particularly low carbon) electricity NSIPs to be brought forward as soon as possible, given the crucial role of electricity as the UK decarbonises its economy.”</i></p> <p>Paragraph 3.3.62 confirms that the: <i>“Government has concluded that there is a critical national priority (CNP) for the provision of nationally significant low carbon infrastructure”</i> and that in assessing applications for nationally significant energy infrastructure projects, the Secretary of State: <i>“should assess all applications for development consent for the types of infrastructure covered by this NPS on the basis that the government has demonstrated that there is a need for those types of infrastructure which is urgent, as described for each of them in this Part.”</i></p> <p>Paragraph 3.2.7 further confirms that the Secretary of State: <i>“has determined that substantial weight should be given to this need when considering applications for development consent under the Planning Act 2008.”</i></p>
2.22.41	<p>REP3-009 Land Rights tracker – see info, yet again just Rampion trying to put a positive spin on our grave concerns as submitted at all deadlines to date but no movement forward and intermittent communication as per our previous representations</p>	<p>Please see comments within reference 2.22.39.</p> <p>In April 2024, the Applicant sent Heads of Terms to the land interest in respect of an Option for a temporary construction access lease (Works No.13) to enable the construction to take place along Kent Street. The Heads of Terms are for a visibility splay/ construction access within Works No.13 which are temporary works – identified as Plot 33/6 within Appendix D of REP4-070. The Applicant has sent these Heads of Terms to negotiate terms for the temporary rights required. However, the land interest is maintaining the DCO Application has affected their ability to market the property and reduced the value of their landholding. There is no evidence of this, nor are the tests for a blight notice met. In the circumstances, the Applicant is unable to make further progress with the land negotiations unless the land interest wishes to discuss the Heads of Terms that have been provided.</p>
2.22.42	<p>Open Hearings Speech 13th April 2024 PM Brighton I'd like to speak with reference to written questions LR 1.2 and LR 1.3 to The Applicant regarding the funding statement and the Book of Reference</p> <p>ESPECIALLY TO LR 1.2 where the ExA state “the effect of construction or operation of the proposed development on property values.....</p> <p>We are a family who own Ridgeland House, later called Oaklands which is one of the nearest properties to the Oakendene site and also very close to Access A61.</p> <p>We have been extremely concerned about Rampion since the beginning and have been members of the CowfoldVRampion group and made representations throughout the examination</p> <p>The project will have the largest detrimental effect for the homes around the substation site and most inconvenience for homes along Kent Street – we belong to both these groups - but Rampion have not been listening.</p>	<p>The land interest purchased the plot of land at some point in late 2020/ early 2021 (the Land Registry document outlines the date as 14 May 2021). The Applicant was made aware of this in June 2021 (by the vendor's agent) and subsequently discussed the project with the Land Interest on the phone in June 2021, via email and at a site meeting in September 2021. The Land Interest has received all relevant consultation material and correspondence since June 2021 and was therefore aware of the Applicant's 's proposals (including the location of the substation as detailed with the Works Plans and Consultation materials sent as part of the Statutory Consultations), when the Land Interest subsequently proceeded with construction of the building. The Applicant notes the decision by the Applicant not to progress the cable route option to the south of Oakendene eastwards towards Bolney was partly due to potential amenity impacts on Ridgeland.</p> <p>The Applicant has clarified the position in respect of potential routes to claim, should there be an effect of construction or operation of the Proposed Development on property values. The Applicant submitted a map as an Appendix at Deadline 4 (see Appendix D Dan and Emily Mulcare-Ball Site Plan within Applicant's Comments on Deadline 3 Submissions [REP4-070]) which shows the landholding extent, outlined by the red line boundary. The location of the</p>

Ref	Deadline 4 submission	Applicant's comments
	<p>Rampion only submitted the Kent Street traffic plan on deadline 3 which shows how much significance they place on it. The applicant has not engaged with us on our issues and does not give an answer to our concerns.</p>	<p>newly constructed property, known as Ridgelands, is located at the south-western corner of the plot, directly to the east of Plot 33/6.</p>
<p>2.22.43</p>	<p>In answer to this direct ExA question the applicant has answered in document REP3- 051 / 8.54 on page 45 - and mentions our property but the facts are not correct and there is no real answer to the question posed by the ExA...</p> <p><i>1. The Applicant understands that one property has been advertised on the open market since February 2024 so it not yet apparent that the only interest that has been received is at a price substantially lower than that for which it might reasonably have been expected to sell had the land not been included for compulsory acquisition in the Order.</i></p>	<p>The Applicant's response to Examining Authority First Written Question LR1.3 in the Applicant's Responses to the Examining Authority's First Written Questions [REP3-051] to which the Land Interest refers was clear. It was not aware of any parties that could serve a blight notice that would be capable of being successfully upheld. That remains the case and no party has submitted any evidence to the contrary.</p>
<p>2.22.44</p>	<p>Our property has been marketed 'off market' for over 9 months and has been on the open market with two high profile agents since Feb 2024, over 4 months, with no firm offers to date. The Chilling effect of Rampion is definitely being felt along Kent Street. Many buyers do not want to view any properties near the sub station</p> <p>We will have to reduce our price further to try and stimulate interest but so far, we not even have any offers to be able to see what capital loss we will have</p> <p>The same has happened to another home further down Kent Street</p> <p>Residents around the substation construction site will be the most affected during construction and afterwards during operation, and we would appreciate it if the ExA would ask the Applicant to engage with us and our issues...they are severe for us as a family - as submitted in emails to the ExA and to the Applicant over many years with no response</p> <p>We believe Kent Street and the two access points and the substation location is the wrong project in the wrong place – as highlighted by Andrew Griffith our local MP. The whole area will be destroyed by a project which will not achieve it macro environmental aims as stated at the onset and I hope the ExA will look into all the representations submitted from local residents around Cowfold</p> <p>Hopefully the ExA will see this for themselves as they walk around the lane and Oaken Dene tomorrow</p>	<p>The Applicant has discussed with the Land Interest on 09 May 2024 the qualification requirements and eligibility for the submission of a blight notice under Section 150 of the Town and Country Planning Act 1990. No part of the Land Interest's property is proposed to be subject to compulsory acquisition powers (only temporary possession powers) therefore the statutory criteria for a blight notice are not met. It is open to the Land Interest to take their own professional advice on this matter and the Applicant has made that suggestion.</p>

Table 2-23 Applicant's comments to Green Properties' Deadline 4 submissions

Ref	Deadline 4 submission	Applicant's comments
Introduction		
2.23.1	<p>1. This is a written submission on behalf of Green Properties (Kent & Sussex) Ltd ("Affected Party") in respect of Deadline 4 as detailed in the Rule 8 letter. This submission references the statutory requirements under the Planning Act 2008 (the "Planning Act"), specifically Section 122, and the guidance provided within the Compulsory Purchase Order (CPO) Guidance (the "Guidance") as well as the following documents:</p> <ul style="list-style-type: none"> i. Ref. REP1-101: Deadline 1 Submission – Written Representations (WRs) ii. Ref. REP3-109: Deadline 3 Submission – Comments on any further information/submissions received by Deadline 3 iii. Ref. REP3-110: Deadline 3 Submission – Comments on any further information/submissions received by Deadline 3 	<p>Paragraph 11 of the Compulsory Acquisition (CA) Guidance (Ministry of Housing, Communities & Local Government (MHCLG), 2013) explains how the tests in section 122(2) of the Planning Act 2008 are to be met. With regards condition 122(2)(a), that the land is required for the development to which the development consent relates, the CA Guidance provides:</p> <p><i>"For this to be met, the applicant should be able to demonstrate to the satisfaction of the Secretary of State that the land in question is needed for the development for which consent is sought. The Secretary of State will need to be satisfied that the land to be acquired is no more than is reasonably required for the purposes of the development."</i></p> <p>With regards condition 122(2)(b), that the land is required to facilitate or is incidental to the proposed development, the CA Guidance provides:</p>
2.23.2	<p>2. Pursuant to the Planning Act, sections 122 to 134 outline the conditions under which a DCO may include powers for compulsory acquisition. Section 122 states that such powers can be authorised only if the land is:</p> <ul style="list-style-type: none"> i. Required for the development, ii. Required to facilitate or is incidental to the development, or iii. Replacement land to be given in exchange for the order land under Sections 131 or 132. 	<p><i>"An example might be the acquisition of land for the purposes of landscaping the project. In such a case the Secretary of State will need to be satisfied that the development could only be landscaped to a satisfactory standard if the land in question were to be compulsorily acquired, and that the land to be taken is no more than is reasonably necessary for that purpose, and that is proportionate."</i></p>
2.23.3	<p>3. The effect of section 122 is to set two main pre-conditions to the inclusion of compulsory purchase powers in a DCO. First the decision-maker must be satisfied that the land is "required" for the stated purpose. The word "required" was included in section 226(1)(a) of the Town and Country Planning Act 1990 ("TCPA 1990") prior to its amendment by the Planning and Compulsory Purchase Act 2004. The meaning of the word "required" in that statute was considered by the Court of Appeal in <i>Sharkey and Another v Secretary of State for the Environment and South Buckinghamshire District Council</i> (1992) 63 P. & C.R. 332. McGowan LJ giving the leading judgment endorsed the approach taken by Roch J and stated:</p> <p><i>I agree with Roch J. that the local authority do not have to go so far as to show that the compulsory purchase is indispensable to the carrying out of the activity or the achieving of the purpose; or, to use another similar expression, that it is essential. On the other hand, I do not find the word "desirable" satisfactory, because it could be mistaken for "convenient," which clearly, in my judgment, is not sufficient. I believe the word "required" here means "necessary in the circumstances of the case."</i></p>	<p>The Applicant seeks powers of compulsory acquisition to acquire new rights and a restrictive covenant (Cable Rights and a Cable Restrictive Covenant) over the Land Interest's land (Plots 33/23, 33/24, & 33/26). These are required for the development to which the development consent relates, namely the onshore cable installation and associated works comprising Work no. 19. The Applicant also seeks to acquire a new right for a construction and operational access over Plot 33/25, which is required for Work no. 14. Temporary possession powers are sought for a temporary construction access (Plots 33/4 & 33/22) for the purposes of Work no. 13.</p> <p>The proposed compulsory acquisition of new rights and restrictive covenants therefore accords with the test in Section 122(2)(a). It is noted the Land Interest does not dispute the requirement for these works, nor the requirement for new rights and a restrictive covenant for those purposes.</p>
2.23.4	<p>4. In <i>Brown v Secretary of State for the Environment</i> (1980) 40 P. & C.R. 285 there is a very long and respectable tradition for the view that an authority that seeks to dispossess a citizen of his land must do so by showing that it is necessary.</p>	<p>The Applicant acknowledges that the proposed DCO Order Limits contain flexibility over the final siting of works, which is controlled by the limits of deviation and the requirements of the Draft Development Consent Order [REP4-004]. This is an accepted approach for Nationally Significant Infrastructure Projects (NSIPs) and other linear infrastructure and is one which has been accepted by the Secretary of State in many made orders, a number of examples of which are provided in the Applicant's Response to Action Points Arising from Issue Specific Hearing 2 and Compulsory Acquisition Hearing 1 [REP4-074] CAH1 Action 6.</p>
2.23.5	<p>5. It follows that the second condition which must be satisfied is that there is a compelling case in the public interest pursuant to Section 122 (3) of the Planning Act 2008. When considering a compelling case in the public interest, the Planning Act requires compliance with the Human Rights Act 1998. This especially refers to Articles 1 and 8 of the European Convention on Human Rights, which safeguard the peaceful enjoyment of possessions and</p>	<p>The Applicant expects to require temporary possession during construction of a working construction corridor of between 30m and 40m wide with permanent rights over a 15m</p>

Ref	Deadline 4 submission	Applicant's comments
2.23.6	<p>respect for private and family life. We have previously submitted information regarding this and do not seek to make a repeat submission [REP3-109].</p> <p>6. The Guidance provides further clarification on these statutory requirements, emphasising the need for detailed justification for each parcel of land and the importance of negotiating with landowners to avoid compulsory acquisition where possible.</p>	<p>easement corridor. The Applicant seeks no greater flexibility in the linear cable corridor than other comparable linear schemes. The degree of flexibility sought is proportionate to requirements of the Proposed Development and the impacts upon the Land Interest. A reduction in the Order Land in this location will materially prejudice the Applicant's ability to deliver the Proposed Development and the significant public benefits that it will bring. It is also noted that the Land Interest does not identify any part of the Order Land in its ownership over which rights are sought which it contends is not required for the Proposed Development.</p> <p>Furthermore, the Applicant has committed to minimise land take and to seek to agree appropriate mechanisms for the release or variation of any rights that may become surplus (Outline Construction Method Statement [APP-255], as updated at Deadline 5).</p>
2.23.7	<p>7. The Examining Authority will be conversant with R. (FCC Environment) v SSECC [2015] Env L.R. 22, in which the Court of Appeal considered the effect of the compulsory acquisition provisions.</p>	<p>The Applicant acknowledges that in principle it is open to the Secretary of State to find that there is an urgent need for development in compliance with the National Policy Statement (NPS) but then find that the section 122 compelling case in the public interest test is not met. However, the examples given in paragraph 11 of the judgment in the FCC case as circumstances where the decision-maker could conclude that there was no compelling case for compulsory acquisition despite an NPS having an established an urgent need for development do not apply to the Draft Development Consent Order [REP4-004]:</p>
2.23.8	<p>8. Examples of where compulsory acquisition may not be justified despite the project being supported by a national policy statement include (see FCC at [11]):</p> <ol style="list-style-type: none"> 1. Where the land sought to be acquired exceeds what is necessary to construct the proposal; 2. The acquisition of a more limited right, rather than the entire land, would suffice; 3. The owner is willing to agree to a sale and accordingly it is unnecessary to compel him to do so; 4. Where, despite the relevant NPS not requiring the consideration of alternative sites for the purposes of deciding whether to grant development consent, the existence of an alternative would be relevant for the purpose of deciding whether there was a compelling case in the public interest for compulsory acquisition. 	<p>The land proposed to be acquired is not excessive. General comments have been made by the Land Interest about the width of the Order Land or particular locations where there is greater flexibility but the Land Interest has not substantiated an argument that any part of the Order Land it owns is not required for the purposes in s122(2) of the Planning Act 2008.</p> <p>The Applicant's land acquisition strategy is proportionate and, in the case of the Land Interest, seeks only the acquisition of rights/restrictive covenants rather than land. The Land Interest has not identified any part of the Order Land for which a lesser type of acquisition would suffice; Whilst voluntary negotiations have been and are still being pursued with interested parties, the Land Interest is not currently willing to conclude a binding agreement as an alternative to compulsory acquisition; and</p>
2.23.9	<p>9. In respect of points 1-4 above, the Applicant has failed to consider any of these points prior to submitting their DCO application.</p>	<p>The Applicant has given extensive consideration to alternative options and routes, including those proposed by the Land Interest, and has provided sound reasons for rejecting them.</p> <p>The Draft Development Consent Order [REP4-004] does not therefore have any parallels with the scenarios envisaged in the FCC case. Moreover, it is not possible to meet the need for the Proposed Development without the requested powers of compulsory acquisition. The Applicant submits that this is not a situation where the Secretary of State can reasonably conclude that there is no compelling case for compulsory acquisition despite an NPS having an established an urgent need for development.</p>
		<p>The compelling case in the public interest for the compulsory acquisition powers sought in respect of the Land Interest's land is met. Further details as to the assessment of the compelling case in the public interest for the purposes of section 122(3) of the 2008 Act is provided in the Statement of Reasons [APP-021] which accompanied the DCO Application.</p>

Ref	Deadline 4 submission	Applicant's comments
2.23.10	<p>10. The precise details of the Affected Party's position have been addressed in prior submissions [REP1-101], [REP3-109] and [REP3-110], but principally amount to an excessively and unjustly large cable route destroying a significant planting area forming part of the Queen's Green Canopy programme and denying the Affected Party the opportunity to plant further woodland and participate in the prestigious Queen's Platinum Jubilee Woodland Programme.</p>	<p>The Applicant does not repeat its previous submissions either but re-iterates that the impacts of acquisition on the recently planted saplings are far outweighed by the significant public benefits that will be delivered by the Proposed Development.</p> <p>As set out in the Applicant's Document Deadline 1 Submission – 8.29 Statement on the Implications of the 2023 National Policy Statement [REP1-031], the Proposed Development is categorised as 'Critical National Priority' (CNP) in the National Policy Statement for Energy (EN-1) (Department for Energy Security and Net Zero (DESNZ), 2024) that was issued by the Government in November 2023 and subsequently designated by Parliament in January 2024.</p> <p>The importance of CNP is set out in Paragraph 3.3.63 of NPS EN-1 (DESNZ, 2024) which states that, subject to any legal requirements: <i>“the urgent need for CNP Infrastructure to achieving our energy objectives, together with the national security, economic, commercial, and net zero benefits, will in general outweigh any other residual impacts not capable of being addressed by application of the mitigation.”</i> The same paragraph states that: <i>‘Government strongly supports the delivery of CNP Infrastructure and it should be progressed as quickly as possible.’</i></p> <p>Part 3 of the NPS EN-1 (DESNZ, 2024) confirms the <i>“urgent need for significant amounts of large-scale energy infrastructure in meeting government's energy objectives.”</i></p> <p>Notwithstanding, the Applicant has continued to engage with the Land Interest on further alternatives submitted by the Land Interest during the examination. The Applicant has given careful consideration to these further proposals and has offered a trenchless crossing extension to avoid the existing saplings. Construction access is still required through the area of saplings however the land take of circa 6m* is significantly reduced from the cable corridor requirement. This offer was emailed to Mr Dickson's agent on 10 May 2024 and the Outline Vegetation Retention and Removal Plan (Document Reference: 8.87) (submitted at Deadline 5) has been updated with the hedgerow H516 shown as 'notched 6m' in this location. Revised key terms were sent on this basis on 08 July 2024.</p> <p>* subject to final design incorporating the turning radius requirements of low loaders necessary for delivery of cable drums, the access road width will be kept to a minimum (i.e., 6m) where possible</p>
2.23.11	<p>11. All reasonable alternatives to compulsory acquisition must be explored and exhausted. The burden rests firmly on the Applicant. This includes modifying the scheme to minimise land acquisition and making genuine attempts to acquire land by agreement. Compulsory acquisition powers cannot be granted unless the Secretary of State is convinced that it is strictly necessary to compulsorily acquire the Affected Party's land and that there is a clear compelling public interest in doing so. The Guidance sets out the crux of the legal test: "Compulsory purchase is intended as a last resort".</p>	<p>The Land Interest misrepresents the test in this respect, which does not require alternatives to have been <i>exhausted</i>. Paragraph 8 of the Compulsory Acquisition (CA) Guidance (Ministry of Housing, Communities and Local Government (MHCLG)) 2013 requires applicants to demonstrate that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored. The Applicant submits that it has done so and that the compelling case in the public interest test is met.</p>
2.23.12	<p>12. <i>Prest v Secretary of State for Wales</i> [1983] 1 WLUK 416 is firm authority for the following propositions: where the scales are evenly balanced — for or against compulsory acquisition then the decision should come down against compulsory acquisition.</p>	<p>It cannot be rationally concluded that the Applicant has failed to give sufficient consideration to the many alternatives proposed by the Land Interest, details of which, together with the reasons for refusal, have been set out comprehensively in the Applicant's Responses to Relevant Representation [REP1-017] (Table LI73), Applicant's Response to Affected</p>

Ref	Deadline 4 submission	Applicant's comments
	<p>the deprivation of an interest in land against the citizens will is only lawful if the public interest decisively so demands. if there is any reasonable doubt on the matter, the balance must be resolved in favour of the citizen.</p>	<p>Parties' Written Representations [REP2-028] (2.11.18 and 2.11.34), and Deadline 3 submission Applicant's Comments on Deadline 3 Submissions [REP4-070]. Furthermore, the Applicant is willing to progress a binding agreement for an alternative option which will reduce the amount of land planted with saplings required for the Proposed Development. Nor can it be reasonably concluded that the Applicant has failed to provide clear reasons for not taking alternatives forward. The Applicant's reasons for refusal of the Land Interest's alternatives have not been challenged in any meaningful way other than by mere assertion.</p>
2.23.13	<p>13. The judgment in <i>R. v Secretary of State for the Environment</i> (1986) 52 P. & C.R. 318 is authority for the following propositions: the decision maker may refuse to confirm an order or confirm associated powers if unsatisfied the applicant for powers has discharged its duty to demonstrate an alternative route is not a viable one. the onus of establishing that a compulsory purchase order can be properly made must be on the acquiring authority. it is its duty to lay before the decision maker the information necessary to convince it of necessity. If the promotor fails to do so the decision maker is fully entitled to say: "I refuse to confirm this order."</p>	
	Outstanding Objections and Approach to Negotiations	
2.23.14	<p>14. The Guidance requires that acquiring authorities must provide substantial evidence of meaningful negotiation attempts. As detailed in Paragraph 19 of the Guidance, the Applicant is compelled to demonstrate that they have exerted reasonable efforts to secure all the land and rights in the Order through mutual agreement. Resorting to compulsory purchase should only be contemplated as an absolute last resort.</p>	<p>The Applicant, in its previous submissions, has provided detailed records of engagement and correspondence with the Land Interest and the Land Interest's agents since 2020 and a comprehensive report on this is set out in the Land Engagement Reports: Dickson (Document Reference: 4.6.6).</p>
2.23.15	<p>15. The Guidance further states at paragraph 25: [25]. Applicants should seek to acquire land by negotiation wherever practicable. As a general rule, authority to acquire land compulsorily should only be sought as part of an order granting development consent if attempts to acquire by agreement fail. Where proposals would entail the compulsory acquisition of many separate plots of land (such as for long, linear schemes) it may not always be practicable to acquire by agreement each plot of land. Where this is the case it is reasonable to include provision authorising compulsory acquisition covering all the land required at the outset.</p>	<p>The Applicant submits that it has complied with Paragraph 25 of the Compulsory Acquisition (CA) Guidance (Ministry of Housing, Communities and Local Government (MHCLG)) 2013 by seeking to acquire land by negotiation wherever practicable. In accordance with that guidance, given the linear circa 38km onshore cable corridor, it was reasonable to include a provision in the Draft Development Consent Order [REP4-004] for compulsory acquisition at the outset. However, the Applicant has continued where practicable to engage with all affected parties since the submission of the Application and throughout the Examination, and it continues to regard compulsory acquisition as a last resort, as can clearly be seen by the continued engagement and attempts to reach agreement with the Land Interest.</p> <p>Notwithstanding those negotiations, it has not been possible to conclude terms with all parties therefore compulsory acquisition powers are necessary to ensure that this Nationally Significant Infrastructure Project (NSIP) can be delivered and that its significant public benefits can be realised.</p> <p>At present, the Land Interest has not confirmed its willingness to conclude an agreement for the land rights sought therefore the conclusion of a voluntary agreement with the land interest is not currently an alternative to compulsory acquisition, and compulsory acquisition powers are therefore necessary, without which the project could not proceed in a reasonable timescale, if at all.</p> <p>The non grant of CA rights would put the delivery of a nationally significant infrastructure project, and the extensive public benefits it will bring, at significant risk.</p>

Ref	Deadline 4 submission	Applicant's comments
2.23.16	<p>16. The Examining Authority has substantially heard submissions on the outstanding objections to the Order at the Compulsory Acquisition Hearing of Tuesday 21 May 2024. The purpose of this submission is not to repeat those. However, it is critical to highlight that, as far as we understand, the Applicant has only reached agreement 3 of the 156 affected parties as at the Deadline 3 submissions on 30th April 2024. It is self-evident there is an unusually high volume of both lack of progress with voluntary arrangements and remaining objections at this stage of the examination.</p>	<p>The Applicant has reached agreement on Key Terms with a number of land interests as set out at 8.81 Applicant's responses to Examining Authority's Second Written Questions (ExQ2) (Document Reference: 8.81) response to LR 2.1 and 2.2 Negotiations continue to be held with individual landowners and their land agent and advisors. A letter has been provided to all parties including Mr Dickson confirming that where appropriate reasonable agent and as required solicitor's fees will be paid as set out in a letter to all landowners of June 2024. The position with regards negotiations with the Land Interests is set out in the Lands Right Tracker [REP4-011]. The Applicant has sought to make substantive progress and since the Compulsory Acquisition Hearing 1 (CAH1) an enhanced Key Terms offer has been issued to the Land Interest being an increase on recent proposals, to which feedback is awaited. Consistent and effective communications with all Interested Parties have continued so as to acquire land and rights by negotiation.</p>
2.23.17	<p>17. The Affected Party has substantially addressed his experience with the Applicant's approach to negotiations in submissions. See [REP1-101], [REP3-109] and [REP3-110]. However, the Examining Authority must place material weight to this factor as the Inspector did the London Borough of Barking and Dagenham Council (Vicarage Field and surrounding land) Compulsory Purchase Order 2021. We will not extensively set out the decision but there are stark similarities between Vicarage and the current DCO before the Examining Authority which must be considered.</p>	<p>The Land Interest refers to the London Borough of Barking and Dagenham Council (Vicarage Field and Surrounding Land) Compulsory Purchase Order 2021, which was refused by an Inspector on 4 October 2022 [see Appendix P]. The circumstances of that CPO are vastly different to the Proposed Development as it concerned the acquisition, relocation or extinguishment of businesses in an existing shopping centre.</p> <p>The reasons for refusing the CPO were many, including:</p>
2.23.18	<p>18. Broadly, the Inspector in Vicarage criticised the Applicant's approach as "ineffective" attempts to acquire the CPO land by agreement and for not keeping delays to a minimum. Therefore, the Inspector determined the compulsory acquisition of land as neither proportionate nor justified in the public interest.</p>	<ul style="list-style-type: none"> • The Inspector was not satisfied that the scheme was viable, particularly as the evidence that accompanied the planning application found the scheme to be 'substantially unviable'. This does not apply the Proposed Development, for which the Applicant has provided a comprehensive Funding Statement [APP-025] which has not been challenged; • The Inspector was not satisfied that there was sufficient financial resources to compensate for business extinguishment. This does not apply to the Proposed Development. No businesses are to be extinguished and the Applicant's evidence in the Funding Statement [APP-025] on its ability to meet compensation liability is unchallenged; • No evidence as to need/future commercial occupation. This does not apply to the Proposed Development for which the needs case is fully grounded in National Policy; • A failure to negotiate in line with the Department for Levelling Up, Housing and Communities (DLUHC) CPO Guidance (2019). The Applicant's land acquisition strategy has regard to both the Planning Act 2008 CA Guidance (MHCLG, 2013) and the DLUHC Guidance (DLUHC, 2019). Further explanation is provided in the Land Acquisition Strategy (Document Reference: 8.92); • Claims that financial offers were substandard. This does not apply to the Proposed Development. No land agent acting on behalf of a land interest has demonstrated that financial offers have not been market value. The Applicant's offers have reflected the freehold market value of the land, despite only new rights being sought, which is well in excess of the Compensation Code statutory basis of compensation. Enhanced offers have recently been made which go even further above the freehold market value of the land. This is further explained in the Land Acquisition Strategy (Document Reference: 8.92).

Ref	Deadline 4 submission	Applicant's comments
		<ul style="list-style-type: none"> • Extensive delays in progressing the scheme, with 3 years from the Cabinet resolution to make the CPO before it was actually made, increased the uncertainty for businesses. This does not apply to the Proposed Development, which has been progressed in a timely way, having regard to statutory consultation requirements. • Lack of information provision at the outset. This does not apply to the Proposed Development which has been subject to extensive consultation, both statutory and non-statutory. <p>The Applicant is not seeking to acquire land, save at the substations, nor will its acquisition require the relocation or extinguishment of businesses. There will be temporary impacts on land use but the Applicant has given binding commitments which are secured by the DCO to seek to minimise land acquisition and mitigate land impacts.</p> <p>It cannot reasonably be concluded that there are 'stark similarities' between the Vicarage Fields CPO and the Draft Development Consent Order [REP4-004].</p>
2.23.19	<p>19. The Applicant began engaging with landowners in 2020 but has secured, as far as we are aware, less than 2% of voluntary agreements. The Applicant dismissed all opportunities to consider and engage in meaningful negotiations with the Affected Party and instead gave arbitrary reasons as they alternatives could not be delivered before reverting to their standard terms. As the Examining Authority has heard, this issue is not limited to the Affected Party alone; there is a clear failure across the scheme by the Applicant to reach voluntary agreements, reflecting ineffective and woeful negotiations over the past four years. Even following the compulsory acquisition hearing of Tuesday 21st May no substantive progress has been made.</p>	<p>This is strongly denied by the Applicant. The Applicant has provided a response to the position on negotiations in respect of the entire Order Land in Deadline 5 submission 8.81 Applicant's responses to Examining Authority's Second Written Questions (ExQ2) (Document Reference: 8.81) response to LR 2.1 and 2.2 which it does not repeat here.</p> <p>The position with regards negotiations with the Land Interest is set out in the Land Engagement Report (Document Reference: 4.6.2). The Applicant has issued Revised Heads of Terms, including a revised easement consideration and an amended plan showing the extended trenchless crossing.</p>
2.23.20	<p>20. The Examining Authority must reflect and place material weight on the reason why so few agreements have been reached.</p>	<p>Contrary to the Land Interest's assertions, the Applicant has sought to make substantive progress since the Compulsory Acquisition Hearing 1 (CAH1), including by putting forward the proposal of extending the trenchless crossing to pass underneath the newly planted tree saplings reducing the extent of tree saplings that require to be removed for the Proposed Development. Whilst the land interest's representative stated acceptance of the extended trenchless crossing to avoid the planted saplings, this was subject to agreement on the movement of the location of the access road. The access entrance proposal was received from the Land Interest's agent on 14 June 2024, has been assessed by the Applicant's multidisciplinary team and rejected due to the additional vegetation loss (hedgerows and trees) it would result in. Further to the above, the land interest's agent has requested revised key terms and the plan with the trenchless crossing shown.</p> <p>Revised key terms and an amended plan to reflect the above and incorporate the increased commercial offer have been issued on 08 July 24 to the land interest and a response is awaited.</p>
Pattern of behaviour		
2.23.21	<p>21. In <i>R v Brent London Borough Council, Ex p Gunning</i> (1985) 84 LGR 168, Hodgson discussed the so called Sedley requirements which are:</p>	<p>The Land Interest has consulted extensively in accordance with the statutory requirements in the Planning Act 2008.</p>

Ref	Deadline 4 submission	Applicant's comments
	<p><i>First ... consultation must be at a time when proposals are still at a formative stage. Secondly the proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response. Thirdly ... adequate time must be given for consideration and response and, finally, fourthly ... the product of consultation must be conscientiously taken into account in finalising any ... proposals.</i></p>	<p>The Applicant worked closely with landowners throughout the development of the proposals as well as consulting with them formally under section 42 of the Planning Act 2008, as set out Consultation Report [APP-027] that was submitted with the DCO Application.</p>
2.23.22	22. The project before the Examining Authority remains in that process of finalisation.	
2.23.23	23. Of all of the legal burdens of the Sedley requirements, the most relevant to this stage of the examination is meeting the threshold of discharging or demonstrating the taking into account of the representations of the Affected Party "conscientiously" in respect of an alternative route across land in order to minimise the serious disruption to their lives and livelihoods.	<p>Under Section 55 of the Planning Act 2008, the Planning Inspectorate is required to invite all relevant local authorities to make representations on adequacy of the Applicant's consultation and publicity arrangements. None of the Local Authorities considered that the Application had not been adequately consulted on, a position subsequently confirmed by the Planning Inspectorate in the Notification of Decision to Accept Application [PD-001]. The Planning Inspectorate was in receipt of a number of Pre-Acceptance representations from Land Interests (AoC-013 to AoC-021) in taking the decision to accept the DCO Application for Examination.</p>
2.23.24	24. A fair definition of conscientiously is conduct undertaken "in a thorough and responsible way". The Examining Authority is invited to conclude there has been no conscientious consultation whatsoever throughout the promotion of this project in respect of the Affected Party.	<p>The allegation that the Applicant has not properly consulted upon Affected Parties generally, or specifically with the Land Interest, is not substantiated and has absolutely no foundation.</p> <p>Furthermore, the Applicant has treated the Land Interest with respect at all times, and it vociferously disputes the allegations that it has acted otherwise.</p>
2.23.25	25. Apposite descriptors for the Applicant's approach to the paramount legal considerations described in this submission are: dispassionate; dilatory; indifferent; insensible; unresponsive; heedless and careless.	
2.23.26	26. By the evidence of the Affected Party (and many others) the Applicant has demonstrated that powers of compulsion would be exercised in a manner that is disorganised, blated and unjust. This conduct reflects a lamentable disregard for those persons most acutely affected, not simply in terms of their proprietary interests but in any care or consideration for how the exercise of compulsory acquisition the impact of these grave powers will have over the course of their lives over the next decade, if granted. There is no sensible basis upon which a decision maker considering the public interest can do other than reject the proposition that such coercive powers may be conferred upon such an irresponsible organisation	
Request for modification of the order		
2.23.27	<p>27. On consideration of the Affected Party's position and the conduct of the Applicant, the Secretary of State cannot allow the development consent order to be granted without amendment. We therefore request Article 23 (3) of Part 5 Powers of Acquisition of the Draft Rampion 2 Offshore Wind Farm Order 20XX is amended as follows:</p> <p>(3) The power to compulsorily acquire land conferred under paragraph (1) does not apply to the Order land shown numbered [33/4, 33/22, 33/23, 33/24, 33/25, 33/26], 34/29 and 34/30 on the land plans.</p>	<p>There is no justification for the amendment sought by the Land Interest. The compulsory acquisition powers sought over this land are required for the Proposed Development, without which the Proposed Development and its significant public benefits could not proceed.</p> <p>The Applicant has explored all reasonable alternatives which have been proposed by the Land Interest and which continue to be proposed, even at such a late stage in the examination. In this respect, regard should be had to the guidance in paragraph 4.3.29 of National Policy Statement (NPS) EN-1 (Department for Energy Security and Net Zero, 2024) which advises that:</p>
2.23.28	28. The only plausible alternative that would dispense with the necessity for an amended order would be the Examining Authorities acceptance of a Change Application accommodating an alternative route proposed by the Affected Party. The acceptance of such application is however contingent on its presentation by the Applicant who, as this submission sets out, has not made any meaningful progress in securing a reasonable alternative. We are confident that any Change Application would not necessitate further consultation as any	<p><i>"It is intended that potential alternatives to a proposed development should, wherever possible, be identified before an application is made to the Secretary of State (so as to allow appropriate consultation and the development of a suitable evidence base in relation to any alternatives which are particularly relevant). Therefore, where an alternative is first put forward by a third</i></p>

Ref	Deadline 4 submission	Applicant's comments
	<p>alternative proposal remains non-material and without affect to other parties and plainly would be agreeable to the relevant land interest.</p>	<p><i>party after an application has been made, the Secretary of State may place the onus on the person proposing the alternative to provide the evidence for its suitability as such and the Secretary of State should not necessarily expect the applicant to have assessed it”.</i></p>
2.23.29	<p>29. The particulars of the final alternative proposal shall be duly submitted to the Examining Authority. We respectfully urge the Examining Authority or Secretary of State, should they possess the legal authority to impose this change in the course of reaching their decision, to exercise such authority.</p>	<p>As it stands, the Land Interest has not presented a ‘final alternative proposal’ to the Applicant; has not provided evidence for its suitability; and has not identified what it considers should be the subject of the Change Application referred to.</p> <p>In the circumstances, there is no alternative to compulsory acquisition which would provide the compelling benefits that the Proposed Development will deliver, and which ought to be preferred.</p>
Conclusion		
2.23.30	<p>30. The Affected Party has expressed his willingness to reach a voluntary agreement with the Applicant throughout the process. However, the Applicant's conduct has made this impossible due to their failure to engage meaningfully and at any point prior to the submission of the DCO and commencement of the examination phase. The reasons provided in this submission show that the Secretary of State cannot demonstrate that compulsory acquisition powers are either necessary or nor constitute a compelling case in the public interest.</p>	<p>For the reasons given above, this is denied.</p>
2.23.31	<p>31. The Affected Party will separately be making an unreasonable costs application.</p>	<p>There is no justifiable basis for a costs application and the Applicant fully reserves its ability to make detailed on the same should an application be made by the Land Interest.</p>

Table 2-24 Applicant's comments to National Grid Energy Transmission's Deadline 4 submissions

Ref	Deadline 4 submission	Applicant's comments
2.1.1	This written summary of oral submissions at CAH 1 is submitted on behalf of National Grid Electricity Transmission Plc ("NGET") in respect of the Development Consent Order ("DCO") application for the proposed Rampion 2 Offshore Windfarm ("Project") made by Rampion Extension Development Limited ("Promoter")	Noted.
2.1.2	NGET NGET owns, operates and maintains the high-voltage electricity transmission network in England and Wales ("NETS"). The transmission system transports large amounts of energy across the country, connecting energy generators such as wind farms, nuclear or combined cycle gas turbine facilities with distribution systems which take energy on to the homes and businesses across England and Wales	Noted.
2.1.2	NGET operates under a transmission licence issued by the Office of Gas and Electricity Markets ("Ofgem"). NGET is subject to regulation by Ofgem and to its duties under the Electricity Act 1989.	Noted.
2.1.3	These submissions should be read in conjunction with NGET's relevant representation, which was submitted to the Examining Authority on 6 November 2023, its written representation, which was submitted on 28 February 2024, and its response to the Examining Authority's first written questions, which was submitted on 25 April 2024.	Noted.
2.1.4	NESO National Energy System Operator Ltd ("NESO") manages the connection application and offer process in the UK between parties wishing to connect to the NETS (such as the Promoter) and the relevant Transmission Owner (such as NGET). These obligations are imposed on NESO by way of its transmission licence, Ofgem, the Electricity Act 1989 and several electricity transmission codes.	Noted.
2.1.5	Section 127 Planning Act 2008 ("PA 2008") NGET is a statutory undertaker within the meaning of section 127(8) of the Planning Act 2008	Noted.
2.1.6	In these circumstances, section 127(2) and (5) provide that any order granting development consent for the Project may only include provision authorising the compulsory acquisition of NGET's land or rights therein if this can be done without serious detriment to the carrying on of NGET's undertaking (whether by the provision of replacement land or otherwise) or any detriment in consequence of the acquisition of a right can be made good.	Noted.
2.1.7	As matters stand, serious detriment to NGET's undertaking would result from the Project and, in particular, from the matters set out below. The Promoter has not explained why it considers that the test in s.127 can be satisfied in this case.	Noted.
2.1.8	Plot 34/28 Plot 34/28 is the site of the Bolney substation extension, which is required to connect the Project to the NETS. It is currently owned by NGET and NGET has undertaken to build the substation via a Transmission Owner Construction Offer ("TOCO") to NESO. Once accepted by NESO, the TOCO is legally binding on NGET. NGET is obliged to conclude an Interface	The Applicant is working to agree a voluntary land agreement with National Grid Electricity Transmission Plc (NGET) to provide sufficient rights to deliver the Rampion 2 Scheme. The land over which rights are required for the substation extension is proposed to be included within the option area. This would provide the Applicant with a right over the land to undertake and retain the works for the Rampion 2 connection, until such time that the substation

Ref	Deadline 4 submission	Applicant's comments
	<p>Agreement ("IA") directly with the Promoter to support the TOCO and to grant each party the right to install, use, retain, repair, inspect, test, remove and modify its own assets on the other party's land, subject to certain conditions and limitations. The IA will also grant each party a right of access to the other party's land for the purpose of exercising such rights or performing such obligations, subject to certain arrangements and provisions. The IA will further provide for the sharing or provision of certain common assets and services between the parties, such as security, electricity supply, telecommunications, and metering.</p>	<p>extension land becomes "operational land" and incorporated within the substation boundary. At present, the land required for the substation extension is not operational land, but comprises a field which is situated outside of the existing substation fenced area.</p> <p>The unlicensed works for which the Applicant will be responsible are described in Work No. 20 of the Draft Development Consent Order [REP4-004], and they include the creation of the connection bays within the substation extension area (Plot 34/28), and the necessary cable connections thereto.</p> <p>Once the substation extension becomes operational land, it is the connection agreement and Interface Agreement which will govern the relationship between the parties including the Applicant's rights to connect to the substation.</p>
2.1.9	<p>This customer connections process is already established and will provide the Promoter with a connection to the NETS and all that it needs to install, retain and access its equipment. There is, therefore, no justification for compulsory acquisition of Plot 34/28 by the Promoter. The Promoter does not need the land, NGET does, and NGET is already the owner.</p>	<p>There is currently no binding agreement in place to provide the Applicant with the rights to install, retain and access its infrastructure.</p> <p>With regards the nature of the land rights required for Plot 34/28, the Applicant has clarified with NGET that it will carry out the unlicensed works for the substation extension and connect its cable thereto but NGET will retain ownership of the substation extension land which will then become part of its operational landholding at Bolney.</p> <p>The Applicant has notified the Examining Authority of its intention to submit a change request to change the type of acquisition powers sought for the substation extension works (Work. No. 20) in Plot 34/28 from freehold acquisition to new rights (to be called 'Unlicensed Works Rights').</p> <p>Please see response to reference 2.2.15 for the change request details below.</p>
2.2.10	<p>Further to this, compulsory acquisition of this plot would cause significant detriment to NGET's undertaking. This is because there are two other customers of NGET who will be connecting to the substation extension once it is built. NGET needs to retain control and ownership of the land in order to facilitate those connections.</p>	<p>The Applicant is now seeking new rights over the land owned by NGET in order to connect the Rampion 2 wind farm to the national electricity transmission network. The Applicant is not seeking to prevent NGET from connecting other generation schemes, however, it needs sufficient rights over Plot 34/28 to undertake its works for the connection and to deliver the project. The rights now sought are no more than is reasonably required for the Proposed Development. NGET will retain ownership of the land and it is envisaged that once the scheme is operational the Applicant will rely on the proposed Connection Agreement and Interface Agreement to access the substation extension and its assets as required.</p> <p>It is worth noting that a review of NGET's Transmission Entry Capacity Register identifies that other schemes which are currently proposed to connect into Bolney have connection dates at the earliest of 2031 which is at least two years after the Applicant's connection offer date. At this point NGET will have control of Plot 34/28 as it will have become operational land. Accordingly, there will be no detriment to NGET's undertaking for the purposes of s127 of the Planning Act 2008 as a result of the proposed acquisition of the rights over Plot 34/28.</p>
2.2.11	<p>At most, the Promoter needs a right to site its equipment on Plot 34/28 once the substation extension is completed. However, even this is not needed because the Promoter will obtain such consent through the connections process already described.</p>	<p>As explained above, the Applicant proposes to submit a change request to seek rights over Plot 34/28 rather than permanent acquisition.</p>

Ref	Deadline 4 submission	Applicant's comments
2.2.12	NGET submits that powers of compulsory acquisition should not be granted over Plot 34/28 and that it should be removed from the DCO entirely.	The Applicant reasonably requires compulsory acquisition powers in respect of these land rights to deliver the scheme in the absence of a voluntary land agreement. It is noted that NGET does not dispute that rights are needed, but rather they consider that the Applicant should rely on consents that the 'promoter will obtain'. However, without a binding agreement in place for those rights the Applicant has no certainty that it can undertake the necessary works.
2.2.13	<p>Plots 34/25, 34/26 and 34/27</p> <p>The Promoter's proposal to compulsorily acquire rights and impose restrictions over the whole of these plots would make it more difficult to site other customers' cables in this area and may have the effect of sterilising the land entirely for that purpose. The plots are larger than the Promoter requires for its purposes and should be reduced. Additionally, the Promoter's ability to use powers of compulsory acquisition should be restricted so that they can only be exercised with NGET's consent.</p>	<p>The Applicant is seeking terms in the voluntary agreement that would allow third party connection works in plots 34/25, 24/26 and 34/27 subject to NGET seeking agreement from the Applicant. This is to ensure that any such third party connection works do not prejudice n project delivery, or the connection to the substation, and to ensure that the Applicant's assets are protected.</p> <p>The land rights sought compulsorily in the draft Development Consent Order will also permit the same.</p> <p>The Applicant proposes to revise and reduce the land area over which rights are sought, and to revise the type of rights sought. It has notified the Examining Authority of its intention to submit a change request by letter dated 27 June 2024 . However, with the absence of detailed design information, the Applicant is unable to revise the areas any further until the final design of the substation extension and connections thereto are known.</p> <p>The Applicant's proposed change request will result in the following revised rights packages for these land parcels:</p> <ul style="list-style-type: none"> - Plot 34/25: <ul style="list-style-type: none"> o Permanent rights and restrictive covenants (Cable Rights and Restrictive Covenants) for Work no 19 over a reduced land area. This reduction is now possible having established the location of the NGET substation extension and in turn been able to delineate between the area required for the cable connection (for which permanent rights are still needed) and the remaining area required for construction access purposes only. o Temporary possession powers for construction access (Work no.13) over Plot 34/31 and newly re-numbered parcels Plots 34/39, and 34/41; o Part of Plot 34/25 is proposed to be re-numbered as Plot 34/40, over which a lesser permanent rights package for an operational access (Work no. 15) is now required to allow access to the Applicant's apparatus in the extended substation. - Plot 34/26 -permanent rights and restrictive covenants (Cable Rights and Restrictive Covenants) are required over this land for Work no 19 for the export cable connection into the substation extension; - Plot 34/27 - new rights and restrictive covenants are sought over a reduced area within this plot for Environmental and Landscape Mitigation pursuant to Work No. 17. This is sought by the Applicant as a result of having agreed the location of the proposed landscaping with NGET. The remainder of the plot (which will be re-numbered as Plot 34/38) is required for temporary possession powers for construction access pursuant to

Ref	Deadline 4 submission	Applicant's comments
		<p>Work No. 13 to facilitate the landscaping and mitigation works as there is no direct access to Plot 34/27 from the highway.</p> <p>These land parcels are outside of the existing substation. The temporary possession powers and permanent rights/restrictions sought over NGET land for these purposes are required for the Proposed Development and are proportionate. The exercise of those rights by the Applicant, which must be undertaken in compliance with the protective provisions in the draft DCO, will not impact on the operation of the existing Bolney Substation or the ability of NGET to carryout is statutory undertaking.</p> <p>Nor will they impact NGET's ability to make future connections to the substation. It is anticipated that the Applicant's Substation extension works will be completed by 2029 which is prior to any subsequent connection date that has been offered to other generation / storage schemes wanting to connect at Bolney. If works proceed as planned the Rampion 2 Wind Farm will be connected and energised before any additional schemes are ready to connect. The Applicant is aware that no other scheme has entered into design discussions with NGET and as such the Applicant is in an advanced position.</p> <p>The connection design is being undertaken by NGET, therefore it will comply with NGET's requirements and the Applicant does not agree that land areas would be sterilised. NGET has not substantiated why the acquisition of its rights would cause significant detriment to its undertaking. NGET will retain ownership of its land, will control the detailed design of the works, and will have the benefit of protective provisions in the order. The Applicant submits that the test in section 127(6) of the Planning Act 2008 is met.</p> <p>The Applicant requires land rights to deliver its scheme and in the absence of a concluded option agreement it is necessary to seek compulsory acquisition powers, which by their very nature must be capable of being exercised without NGET's consent.</p>
2.2.14	<p>The flexibility argued for by the Promoter in relation to the siting of its own cables risks being bought at the expense of flexibility for others who might subsequently wish to connect to the transmission system. Such connections are a highly valuable resource which NGET, as the relevant statutory undertaker, plays a vital role in coordinating. NGET is able, and is in fact obliged, to take a whole system view rather than considering this issue only in terms of the needs of individual applicants. Permitting the Promoter to compulsorily acquire the rights and restrictions it seeks would interfere with NGET's ability to carry out that co-ordinating role and may prevent others from connecting to the transmission system or make such connections unnecessarily complex. It would, therefore, cause serious detriment to NGET's ability to carry on its undertaking.</p>	<p>Please see the responses above.</p>
2.2.15	<p>NGET submits that Plots 34/25, 34/26 and 34/27 should be reduced in size to reflect the land actually needed by the Promoter for its cables. Such reduction should be agreed with NGET as the statutory undertaker, so that it is able to co-ordinate the connection of the Project to the transmission system with connections required by other parties. Additionally, the DCO's protective provisions should prevent the Promoter from exercising powers of compulsory acquisition over NGET land without NGET's agreement.</p>	<p>Please see the details of the proposed change request which are further explained above. All of the works proposed in relation to NGET land at Bolney remain necessary for the Proposed Development in order to deliver the substation extension and connection thereto, and to operate and maintain it. The Applicant necessarily requires land rights to undertake those works and to operate, maintain and protect its infrastructure.</p> <p>Whilst positive engagement is taking place with NGET with regards to land rights, proposed to be in the form of an Option for an easement for the cable connection and a Connection</p>

Ref	Deadline 4 submission	Applicant's comments
2.2.16	<p>Promoter's Cable Design Works NGET considers that the Promoter needs to meet with NGET to discuss its cable design works and how these interact with the Bolney substation extension. Following this, the parties should provide an update to the Examining Authority.</p>	<p>Agreement for the substation extension, there is no binding agreement in place at present which will ensure that the Applicant has the necessary land rights it requires for these purposes.</p> <p>Accordingly, in the absence of concluded agreements, if these parcels are removed from the Order Land, and the compulsory acquisition and temporary possession powers sought over them are not authorised, the Applicant will not be able to connect to the national grid and the Proposed Development with its attendant public benefits cannot proceed.</p> <p>The Applicant is surprised by this comment. It has met with NGET regarding the substation extension and connection works on a number of occasions over the past 2 years. NGET has confirmed the direction the cable will connect from and has identified the design information required to complete the exercise. NGET has stated that a refined substation and connection design will not be available until Q4 2024. The Applicant awaits more design information from NGET before it can provide any further information or comment, which it will look forward to receiving.</p>

Table 2-25 Applicant's comments to National Highways' Deadline 4 submissions

Ref	Deadline 4 submission	Applicant's comments
2.25.1	<p>I refer to the recent Examination hearings. Please find attached National Highways Deadline 4 Submissions;</p> <ol style="list-style-type: none"> 1. Summaries of the submissions of Sarah Marshall for 16 and 17 May 2024 and Kevin Bown for 16 May 2024. 2. National Highways Standard Protective Provisions 3. Tracked changes to the Applicant's draft Development Consent Order (Revision D) submitted for Deadline 3 and dated April 2024 as requested by the Examining Authority. Two definitions have been added to the draft DCO and amendments made to Schedule 10 Part 7 for the Protection of National Highways. 4. Justification for National Highways Standard Protective Provisions 5. A Legal Opinion of Ruth Stockley KC endorsed 12 April 2024 – Regulation of Streetworks on the Strategic Road Network 	<p>Noted, the Applicant has no further comment on this matter at this time.</p>
2.25.2	<p>Annex A National Highways comments on other RRs NH has reviewed the RRs submitted by other parties.</p> <p>We note that significant numbers of parties raise concerns with regards highways matters, be there general, local or strategic road network related. We believe this strengthens the case for having an Issue Specific Hearing on highways and related matters.</p> <p>In particular we note that West Sussex County Council's RRs regarding Traffic and Transport echo our concerns and requirements as set out in the NH RR/PADs. Other authorities such as Horsham and Mid Sussex and the South Downs National Park also raise concerns that echo ours.</p> <p>While it remains entirely possible that all our concerns and requirements can be fully addressed, at this point in time many matters remain outstanding.</p> <p>We are committed to working with all parties to seek to resolve all the outstanding matters, but the onus is on the applicant to provide the necessary details and proposals for our assessment and to recognise the ways in which we are obliged to work; for example with regards following the Design Manual for Roads and Bridges or our legal requirements under our licence with regards the likes of Protective Provisions.</p>	<p>The likely significant transport effects associated with the construction phase of the Proposed Development have been assessed within the Chapter 23: Transport, Volume 2 of the Environmental Statement (ES) [APP-064] and Chapter 32: ES Addendum, Volume 2 of the ES [REP1-006] (updated at Deadline 5) based upon construction traffic estimates included in Appendix 23.2: Traffic Generation Technical Note, Volume 4 of the ES [REP3-021] (updated at Deadline 5). Taking account of controls and mitigation included within the Outline Construction Traffic Management Plan [REP4-045] the Proposed Development is not predicted to lead to significant environmental effects on transport receptors on the Strategic Highway Network.</p> <p>The Applicant is also working with National Highways to reach agreement on the acceptability of construction access designs on the A27 at Hammerpot (A-21 / A-22) with approval of the Road Safety Audit team and brief received from National Highways on the 11 June 2024. The Applicant has continued discussions on this topic and remains confident that agreement can be reached on the acceptability of access designs prior to the end of the Examination. A Geotechnical Statement of Intent technical note was issued to National Highways on 22 April 2024 with minor comments received on 13 May 2024. This feedback has been incorporated into an updated version of the technical note which was sent to National Highways on 23 May 2024.</p>
2.25.3	<p>Summary of Submissions made in Examination by National Highways on 16 and 17 May 2024</p> <ol style="list-style-type: none"> 1. Sarah Marshall Senior Planning Lawyer and Head of Highways and Planning (South) 16 May 2024. 	<p>The Applicant notes this summary of the oral submissions made at Issue Specific Hearing 2 (May 2024).</p> <p>The Applicant notes that the protective provisions included in the Draft Development Consent Order [REP4-004] (updated at Deadline 5) contain proportionate protective provisions for National Highways in connection with works which may affect the strategic road network as set out below.</p>

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	<p>Ms Marshall informed the ExA that National Highways do not permit deemed consents for impacts on the Strategic Road Network (SRN) and assume the ExA is satisfied this can be dealt with through the Provisions for the Protection of National Highways.</p> <p>The references to deemed consent in Articles 11 (7), 15 (5) referring to streetworks is not agreed by National Highways. National Highways shares the ExA concerns regarding the 28 day time period. Ms Marshall confirmed to the ExA that safety is always a priority for National Highways and National Highways will not agree to deemed consent on matters concerning the SRN.</p>	
2.25.4	<p>17 May 2024 The Applicant has stated that the authorised development's interface with the SRN is limited to the creation of construction access on the A27. National Highways do not agree with this statement . the cabling involves 4 pipes up to a total of 8m width going beneath the SRN which has a width including verges of approximately 43 m and is a dual carriageway under the national speed limit. The SRN is a nationally significant asset a national and economic arterial network in public ownership and an undertaking in its own right. The applicant has sought to simply and remove paragraphs of National Highways standard protective provisions to sit on the face of the development consent order to the extent that the protective provisions are completed undermined.</p>	<p>The use of a Horizontal Directional Drill (HDD) to install cable ducting and cables underneath the strategic road network (SRN) will be at a sufficient depth to avoid any impact on the carriageway or road verge. This is evidenced in the geotechnical Statement of Intent provided to National Highways (see Appendix A Action points 46 and 57 of Applicant's Responses to Action Points Arising from ISH2 and CAH1 (Document Reference 8.70) submitted at Deadline 4 [doc ref REP4-074]</p>
2.25.5	<p>National Highways is willing as it has done with other Development Consent Orders (DCOs) to enter into a side agreement with the Applicant for project specific protective provisions to for example disapply some of the standard paragraphs contained in the protective provisions to sit on the face of the order and which are not expected to apply to this project.</p>	<p>The Applicant considers that the protective provisions included in the Draft Development Consent Order [REP4-004] (updated at deadline 5) include protection for National Highways that are proportionate to the proposed development, and that it is not appropriate to include on the face of the Order provisions which are accepted as not expected to apply to it.</p>
2.25.6	<p>National Highways is not prepared to accepted any 'deemed refusal' for statutory undertakers with safety critical undertakings and for impacts and matters concerning the SRN and this position is reflected in National Highways standard protective provisions.</p>	<p>As noted above, protections for National Highways are included in the protective provisions contained within the Draft Development Consent Order [REP4-004] (updated at Deadline 5).</p>
2.25.7	<p>National Highways would refer the Examining Authority to the Sheringham and Dudgeon Extension Projects DCO made 17 April 2024 for a wind farm project and cabling under the SRN. National Highways standard protective provisions sat on the face of the DCO and the Applicant (Equinor) entered into a side agreement with National Highways for project specific protective provisions.</p>	<p>The Applicant refers the Examining Authority (ExA) to the relevant paragraphs of the Report of the Examiner of the Sheringham and Dudgeon Extension Projects (28.9.7 to 28.9.48). In that case, the Protective Provisions (PPs) were accepted in the form advanced by National Highways because the objection submitted to the Application by National Highways was not withdrawn, and the Examiner considered that the proposed scheme might cause 'serious detriment' to the strategic road network (SRN). In that case, section 127 of the Planning Act 2008 was not seen to be satisfied. However, the facts were not the same as the current Application. The reason for that is clearly set out at paragraph 28.9.48, that the proposals would potentially conflict with a DCO application made by National Highways which was under Judicial Review at the time, and potentially cause NH to breach its own DCO. Day-to-day construction impact and HDD cabling in that Examination Report was not considered to be serious detriment to National Highways' undertaking (paragraph 28.9.47).</p> <p>The Applicant refers the ExA to the Examining Authority's Report in the HyNet Carbon Dioxide Pipeline Examination (DCO made 2024), which concludes that PPs should be proportionate to the impact of the proposed scheme on a statutory undertaking. In that Report, the Examiner took into account that the compulsory acquisition of subsoil beneath a highway does not result in serious detriment to National Highways' undertaking (para 8.7.410); that an NSIP has considerable policy backing and an urgent need for delivery and in the absence of voluntary</p>

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2.25.8	<p>2. Kevin Bown – Spatial Planner (South East) 16 May 2024</p> <p>Mr Bown confirmed to the Examining Authority that National Highways continues to work with the Applicant and West Sussex County Council and welcomes the progress made with regards to the various highway matters discussed in Examination on 16 May and on 17 May regarding compulsory acquisition/protective provision matters.</p>	<p>agreement, where compulsory acquisition of land is required for delivery, there is a compelling case in the public interest (paragraph 8.7.414). In the present case, Rampion 2 will not impact the SRN other than traffic management required in the construction of a single temporary construction access off the A27 and HDD cabling under the carriageway. This will not comprise serious detriment to the SRN. The Applicant submits therefore that the PPs submitted by the Applicant for the protection of National Highways' statutory undertaking are proportionate and justified (and National Highways' PPs are onerous and superfluous).</p> <p>The Applicant has requested engagement with National Highways estates team to reach a voluntary agreement in terms of compulsory acquisition though has not received a response. Key terms have been issued for the land required for the scheme.</p>
2.25.9	<p>Mr Bown referred to traffic modelling and looking at the impact of signalling in particular for Tolmare Farm and the proposal to use signals to allow construction traffic to join the A280 (local road network). National Highways would ask that it be consulted by the Applicant on these proposals given the use of the A280 as an alternative route to join the A27. Both A27 junctions are sensitive to change. National Highways is happy to work with West Sussex County Council and the Applicant who has agreed to consult with National Highways. The signals would be 'on demand' and only activated if a construction vehicle wishes to join the A280.</p>	<p>Details of the proposed use of temporary traffic signals on the A280 Long Furlong is provided within the Construction Accesses A-26, A-28, A-61 and A-64 Traffic Management Strategies included in Appendix D of the Outline Construction Traffic Management Plan [REP4-045] updated at Deadline 5.</p> <p>It is agreed that the proposal is the traffic signals to operate so that the construction access is only called when a vehicle wishes to join the A280 from Access A-28 in order to minimise traffic delays. The transport modelling contained Construction Accesses A-26, A-28, A-61 and A-64 Traffic Management Strategies included in Appendix D of the Outline Construction Traffic Management Plan [REP4-045] updated at Deadline 5 shows that the temporary signals would operate within capacity during the AM and PM peaks and will not impact the Strategic Road Network.</p>
2.25.10	<p>Mr Bown informed the ExA that once National Highways fully understands the details of what is proposed on the local road network it will enable National Highways to finalise its proportional and appropriate assessment of the likely consequential impacts on the strategic road network ('SRN'). National Highways notes that the Examining Authority raised similar questions on 16 May of the Applicant regarding the local roads as National Highways has done regarding the A27 and A23. National Highways concern is to ensure that the Applicant provides sufficient detail at this stage to facilitate a national transport policy compliant assessment and avoid risks associated with seeking to do things later only to find they are not possible for financial, technical or practical reasons.</p>	<p>Further information on estimated construction traffic flows using the A23 and A27 has been submitted to National Highways on 21 June 2024. This information based upon construction traffic estimates contained within Appendix 23.2: Traffic Generation Technical Note, Volume 4 of the Environmental Statement (ES) [REP3-021] (updated at Deadline 5) and consistent with routing contained within the Outline Construction Traffic Management Plan [REP4-045] (updated at Deadline 5) and with impacts reported within Chapter 32: ES Addendum, Volume 2 of the ES [REP1-006] (updated at Deadline 5). This information demonstrated that the Proposed Development will result in minimal traffic flows increases on the Strategic Road Network when set against the context of existing traffic flows.</p> <p>In relation to the predicted impacts on the Strategic Road Network, it is noted that routing contained within the Outline Construction Traffic Management Plan [REP4-045] (updated at Deadline 5) is based upon use of the Strategic Road Network as far as possible before routing onto the local highway network, to ensure that construction traffic is using the most appropriate routes.</p> <p>It is also noted that the Applicant will employ a Delivery Management System (DMS) during construction of the Proposed Development to control the timing of deliveries to site and minimise the number of construction vehicles on the road and avoid the risks of platooning, particularly during peak periods. This proposed DMS is detailed in Section 8.4 of the Outline</p>

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2.25.11	<p>Following National Highways most recent meeting with the Applicant on 16 May, the Applicant confirmed to National Highways that they would provide further granular information on the remaining outstanding issues which include;</p> <p>a. An update of which parcels of land are required, for what purposes (for example trenchless crossing, site access or some other purpose), and by which statutory or other process the Applicant believe the purposes can be best served.</p> <p>b. Road Safety Audit Team CVs and Audit to cover the current two alternative A27 Hammerpot compound accesses (which were received by National Highways on 28 May and currently being reviewed). National Highways confirmed it remains hopeful the A27 related RSA process can be completed by Deadline 5.</p> <p>c. Receiving an updated set of documents from the Applicant during week commencing 20 May responding to National Highways comments on the trenchless crossing proposals (however as at 3 June/Deadline 4 National Highways has not received these documents from the Applicant).</p> <p>d. Continued engagement and discussions on the Applicant's proposed DCO and National Highways standard protective provisions (however to date the Protective Provisions have not been agreed).</p>	<p>Construction Traffic Management Plan [REP4-045] (updated at Deadline 5) and is consequently secured by Requirement 24 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5). It is therefore not anticipated that platooning of vehicles will occur on the Strategic Road Network.</p> <p>a. An excel table summarizing the Book of Reference Plot numbers (and associated plan) has been sent to National Highways on the following dates: 13 May 2024, 18 May 2024, 6 June 2024, 19 June 2024, 01 July 2024 and 08 July 2024. The Applicant is yet to receive a response from the National Highways Land Team. For ease of reference, the different Works and land requirements for each of these Plots are summarised below:</p> <ol style="list-style-type: none"> 1. The following Plots are affected by Works No.9 – Cable Installation works (including construction and operational access), as per the Onshore Works Plans [PEPD-003], specifically Sheet 7, for which a package of Cable Rights and a Cable Restrictive Covenant are sought. <ul style="list-style-type: none"> • Plot 7/5 (WSX319438) comprises land in the freehold ownership of National Highways, which is also adopted Highway, with rights sought over <i>'approximately 7824 square metres of land being adopted highway and verge (Arundel Road, A27) and overhead electricity lines, lying north east of Steyne Wood and north of New Place Farm, in the parish of Angmering CP.'</i> • Plot 7/6 and 7/12 are both Unregistered plots of Land comprising adopted highway where National Highways has presumed ownership of subsoil (Part width of highway). Plot 7/6 comprises <i>'approximately 23 square metres of land being adopted highway (Arundel Road, A27), lying north east of Steyne Wood and north of New Place Farm, in the parish of Angmering CP.'</i> Plot 7/12 comprises <i>'approximately 2117 square metres of land being adopted highway (Arundel Road, A27), overhead electricity and telecommunication lines, footway, accessway, verge and trees, lying north east of Steyne Wood and north of New Place Farm, in the parish of Angmering CP.'</i> • Plot 7/13 (WSX320322) comprises land in the freehold ownership of National Highways, which is also adopted Highway, with rights sought over <i>'approximately 446 square metres of land being adopted highway (Arundel Road, A27), grassed area, wooded area and verge, lying north east of Steyne Wood and north of New Place Farm, in the parish of Angmering CP.'</i> 2. The following Plots are affected by Works No.13 – Temporary construction Access, as per the Onshore Works Plans [PEPD-003], for which a package of temporary rights is sought. <ul style="list-style-type: none"> • Plot 7/7 (Title WSX319438) is in the freehold ownership of National Highways, which is also adopted highway and comprises <i>'approximately 131 square metres of land being adopted highway and verge (Arundel Road, A27), lying north east of Steyne Wood and north of New Place Farm, in the parish of Angmering CP.'</i> • Plot 7/15 (Title WSX320322) is in the freehold ownership of National Highways, and is also adopted highway and comprises <i>'approximately 2356 square metres of land being adopted highway (Arundel Road, A27), footway, grassed area, wooded area, access path and verge, lying north east of Steyne Wood and north east of New Place Farm, in the parish of Angmering CP.'</i>

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		<ul style="list-style-type: none"> • Plot 7/16 is Unregistered land which is adopted highway, comprising <i>'approximately 293 square metres of land being adopted highway (Arundel Road, A27), verge, access track, wooded area, grassed area, drain, lying west of Swillage Lane and north east of New Place Farm, in the parish of Angmering CP.'</i> • Plot 7/17 is freehold land in the ownership of National Highways, which is also adopted highway (WSX323969) and comprises <i>'approximately 919 square metres of land being adopted highway and verge (Arundel Road, A27), access track, wooded area, grassed area drain, lying west of Swillage Lane and north east of New Place Farm, in the parish of Angmering CP.'</i> • Plot 7/18 is owned freehold by National Highways under Title WSX323969 and comprises <i>'approximately 21 square metres of land, being wooded area and drain lying west of Swillage Lane and north east of New Place Farm'. It is not adopted highway.</i> • Plot 7/9 and Plot 7/19 both form part of adopted highway and are required for Temporary possession and use. Plot 7/9 (WSX329094) comprises <i>'approximately 351 square metres of land being adopted accessway off Arundel Road, grassed area and verge, lying north east of Steyne Wood and north of New Place Farm, in the parish of Angmering CP'.</i> Plot 7/19 (Title WSX323969) comprises <i>'approximately 224 square metres of land being adopted highway verge and scrubland lying west of Swillage Lane and north east of New Place Farm, in the parish of Angmering CP'.</i> • Plot 7/8 and 7/14 are both Unregistered plots of adopted highway for which it is assumed that National Highways has presumed ownership of subsoil (Part width of highway). These are required for Temporary possession and Use and comprise <i>'approximately 518 square metres of land being adopted highway and verge (Arundel Road, A27) and footway lying north east of Steyne Wood and north of New Place Farm, in the parish of Angmering CP' (Plot 7/8)</i> and <i>'approximately 96 square metres of land being adopted highway (Arundel Road, A27), lying north east of Steyne Wood and north of New Place Farm, in the parish of Angmering CP' (Plot 7/14).</i> <p>3. The following Plots are affected by Works No.14 – Construction and Operational Access Rights, as per the Onshore Works Plans [PEPD-003]. for which a combined package of construction and operational access rights is sought.</p> <ul style="list-style-type: none"> • Plot 7/3 comprises <i>'approximately 118 square metres of land being hard standing, part adopted highway and verge (Arundel Road, A27), lying north of Steyne Wood and north west of New Place Farm, in the parish of Angmering CP.'</i> <p>b. Road Safety Audit team CVs were submitted to National Highways and approved on the 11 June 2024. These Road Safety Audits are now in progress and the Applicant remains confident that they can be completed, and agreement reached of the proposed design of construction access arrangements at A27 Hammerpot, prior to the end of the Examination.</p> <p>c. A Geotechnical Statement of Intent technical note has been issued to National Highways on 22 April 2024 with minor comments received on 13 May 2024. This feedback has been</p>

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2.25.12	17 May 2024 Mr Bown confirmed to the ExA that National Highways is expecting its outstanding concerns regarding the above matters and the impacts of the construction phase on the SRN can be addressed and agreed with the Applicant by the close of the Examination.	<p>incorporated into an updated version of the technical note which to National Highways on 23 May 2024.</p> <p>d. The Applicant responded to National Highways comments on the Protective Provisions under discussion on 17 June 2024, together with a full explanation of the relevant protective provisions retained in the draft, in the context of the impact of the Proposed Development on the Strategic Road Network (SRN).</p> <p>The Applicant has addressed the technical concerns raised by National Highways and has provided a Geotechnical Statement of Intent which is now agreed.</p> <p>The applicant is undertaking a Road Safety Audit (RSA) which will be provided to National Highways at Deadline 5.</p> <p>No response has been received from National Highways estates team.</p> <p>The Protected Provisions being sought by National Highways are not appropriate for the level of interaction with the Strategic Road Network (SRN) created by the construction of Rampion 2.</p>
2.25.13	APPENDIX 1 National Highways Standard Protective Provisions	<p>The Applicant appends to this Response (Appendix A) the form of Protective Provisions submitted to National Highways, in response to the set of protective provisions provided by National Highways.</p> <p>The Applicant would note that it has, since February 2024, been attempting to engage with National Highways on the reasons why the form of Protective Provisions put to National Highways by the Applicant, are not considered by National Highways to be sufficient on the facts of the Application. The Applicant notes that on 23/05/2024 in an email, National Highways agreed that not all of the standard provisions were relevant. The position seems to have been retracted by the submission of Appendix 1 at Deadline 4.</p> <p>The Applicant takes the view adopted by the Examining Authority in the HyNet proceedings (paragraph 8.7.439 of the Examiners Report to the Secretary of State following the Examination of the HyNet Carbon Dioxide Pipeline Application), that the protective provisions included in the DCO should be appropriate and proportionate to the impact of the Proposed Development. NH cites the Sheringham and Dudgeon Extension projects as precedent for the 'NH standard protective provisions' (i.e. the form included at Appendix 1 of Deadline 4 submission) and justification for the inclusion of them in all development consent orders. However, in the Report, it is clearly stated in the latter Examination that the inclusion of that form of protective provisions was justified on the particular facts as it was found that there was the potential for serious detriment to National Highways' undertaking.</p> <p>The Applicant submits that the Application will not cause any serious or material detriment to National Highways' statutory undertaking, and that the protective provisions should be appropriate and proportionate. To that end, the Applicant notes that the Proposed Development is a Nationally Significant Infrastructure Project (NSIP) with considerable policy support and a case for delivery as set out in National Policy Statement EN-1 issued in 2011 and even more so in the EN-1 issued in 2023 which identifies a critical national priority for the provision of low carbon infrastructure including offshore wind. Should any form of protective provision include</p>

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		<p>unjustified and onerous provision, there is a risk of compromising the ability to deliver the Proposed Scheme.</p> <p>Following a meeting with NH the Applicant sent National Highways a revised form of draft protective provisions for inclusion in the Draft Development Consent Order [REP4-004] but has not had a response.</p> <p>The justification for the form of Protective Provisions, submitted by the Applicant, is set out in the response to Appendix 3 below.</p>
	<p>APPENDIX 2 Draft Development Consent Order Revision D April 2024 (Submitted by Applicant for Deadline 3) National Highways Tracked Changes</p>	
2.25.14	<p>APPENDIX 3 Justification (Explanatory Document) for National Highways Standard Protective Provisions</p> <p>1 Introduction</p> <p>1.1 This document provides an update to the Examining Authority about the standard Protective Provisions for the benefit of National Highways Limited (National Highways).</p> <p>1.2 The Protective Provisions requested by National Highways to be included at Schedule 10 Part 7 to the Order are at Appendix 1 of this document (National Highways Protective Provisions).</p> <p>1.3 The National Highways standard Protective Provisions are not agreed by the Applicant.</p> <p>1.4 The Applicant has included in Schedule 10 Part 7 to the Order which is before the Examining Authority (as submitted by the Applicant at Deadline 3) a version of the National Highways Protective Provisions which has been heavily sanitised to remove a number of critical protections to the strategic road network and which are required by National Highways in order to ensure compliance with its statutory duties and regulatory responsibilities. For the avoidance of doubt, National Highways does not agree to the inclusion of Schedule 10 Part 7 of the Order as is currently before the Examining Authority and requests that Schedule 10 Part 7 be substituted for the version of the National Highways Protective Provisions found at Appendix 1. We set out the justification for this in the following paragraphs.</p> <p>2 Justification for the National Highways Protective Provisions</p> <p>2.3 The Authorised Development (as included at Schedule 1 Part 1 of the proposed Order submitted at Deadline 5) includes the following works which affect land and property owned and occupied by National Highways for the purposes of its undertaking comprised specifically in the A27 and A23.</p> <p>2.4 The relevant works which affect the A27 can be summarised as being horizontal directional drilling of cables underneath the carriageway and the construction of a temporary access track /junction to allow access to a Construction Compound at Hammerpot. (Works No. 9 and 13) which appears on sheet 7 of the Lands Plans 28 of the Works Plans to access onto the A27 carriageway itself. The proposed Order gives the Applicant wide ranging powers under "Further Associated Development" to the extent that this work has been assessed by the environmental statement. Whilst it may not be the current intention of the Applicant to carry out any associated development which would impact on the strategic road network, the inclusion of this in the authorised development would give the Applicant all it needed to commence works if a decision to do so was made after the grant of the DCO.</p>	<p><u>Response to paragraph 1</u></p> <p>The Applicant accepts the principle that there should be protective provisions in the DCO to ensure that National Highways is afforded an appropriate degree of protection and control over how the limited works which interact with the strategic road network (SRN) will be carried out.</p> <p>The Applicant does not accept National Highways' position that the form protective provisions as amended by the Applicant ("the Applicant's PPs") remove critical provisions. Rather, it is amended to comprise a proportionate and appropriate level of protection for National Highways in the context of the Proposed Development.</p> <p>The trenchless crossing of the A27 is expected to be by Horizontal Directional Drill (HDD). The aim of using HDD for the crossing of the A27 at Hammerpot is to have zero immediate and long term impact on the operation and availability of the A27. Subject to detailed design and ground investigation, it is intended that four trenchless crossings will be created to allow the installation of electricity transmission cables for the Rampion 2 scheme. Depending on the outcome of geotechnical investigations, the HDDs will be at least 10 metres below the carriageway. The National Highways Geotechnical Advisor has stated to the Applicant they have no further concerns with the approach being made and that they agree with the Applicants assessment that there is a low risk to any damage to the carriageway.</p> <p><u>Response to paragraph 2.4</u></p> <p>As is clear from the description of the works, that there is no closure of the SRN, no opening up of the SRN and no serious detriment to the SRN. The HDD comprises drilling (cable works) more than 10 m below the SRN. In terms of land acquisition, this will entail the requirement for an easement for the cable route of approximately 20 metres with temporary rights sought over a construction corridor of 40 metres, increasing to 50 metres where the HDD compounds are located. The construction of the access track off the A27 will not require the acquisition of any part of the SRN, not closure of it.</p> <p>The Applicant does not accept National Highways' position that the power to undertake "associated development" would cause any significant impact or serious detriment to the SRN. Any development authorised by the Draft Development Consent Order [REP4-004] is limited</p>

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	<p>Consequently, the protective provisions agreed for the protection of National Highways must be read not just in the context of the specific works that have been detailed as they impact the strategic road network, but also those works of associated development that may be subject to change where there could be a potential risk to road users.</p> <p>2.5 We understand the Applicant's position to date is that the National Highways Protective Provisions provides National Highways with a disproportionate amount of protection when assessed in the context of the work the Applicant proposes to carry out in the vicinity of the strategic road network. We understand that this is because no works are proposed to the surface of the carriageway itself. Respectfully, we disagree with the Applicant and consider that the works proposed (however temporary or non-invasive to the carriageway) have the potential to cause significant disruption, damage and injury to the public if not managed in accordance with established protocols. Any sub-surface works (however insubstantial they are expressed to be and using industry established practices) have the potential to cause geological displacement and carriageway settlement to intolerable levels, which is a safety risk to road users. Further, the construction of temporary accesses off the strategic road network involves development that must be managed alongside National Highways to ensure the safety of road users and contractors alike.</p> <p>2.6 Given the risk of damage to the strategic road network inherent in any proposed works to take place on, over or under it, National Highways requests that the Applicant provide financial security in the form of a bond and cash deposit to guarantee that in the event of default on the works, National Highways can access funds to put the strategic road network back into the condition it was in prior to the commencement of the authorised works. This is not a request that is specific to this project and is a policy requirement of National Highways in respect of all third party development taking place on, under or over the strategic road network. The Applicant has not agreed to provide the necessary financial protections in the form required by National Highways and the Examining Authority and Secretary of State should note that failure to agree to the financial protections requested by National Highways would leave it open to a substantial risk for which it has no budget in place and for which it is not funded.</p> <p>2.7 Finally, were the Examining Authority and Secretary of State minded to accept the protective provisions in the form proposed by the Applicant, it should be noted that this would expose National Highways to substantial financial risk across all proposed development consent orders in which there is an interface with the strategic road network – which is the vast majority of them. It would be setting a precedent that Applicants for development consent orders do not need to provide financial security to highway authorities for works that affect their networks, exposing them to substantial costs for which they are not funded. It also inherently increases the risk of injury and fatalities, as if National Highways is not funded to carry out emergency works occasioned by third party development, the work cannot be completed to bring the road back up to a safe standard. It is respectfully submitted that it is not for the public purse to subsidise or insulate the potential impact to the strategic road network occasioned by third party developments. This cost should fall squarely on the Applicant bringing forward the development.</p> <p>2.8 The Applicant has deleted the reference to “bond sum” and “cash surety” and commuted sum and also a substantial part of the definition of “detailed design information”. For the reasons given above, the definition of bond sum and cash surety and the corresponding provisions in the National Highways Protective Provisions should be reinstated in full. The definition of “detailed design information” should also be reinstated in full, as the definition</p>	<p>to that which falls within the scope of the environmental assessment, which assesses the impact of those works and the construction methodologies employed by them. The Environmental Statement (ES) does not assess any development that might affect or cause detriment to the SRN. Reference to the (very usual) power in the Draft Development Consent Order [REP4-004] to carry out associated development does not justify the inclusion in the Draft Development Consent Order [REP4-004] of onerous protective provisions that would have the potential effect of compromising the ability to implement the NSIP.</p> <p><u>Response to paragraph 2.5</u> The Applicant maintains its position that the proposed works do not warrant the onerous NH PPs.</p> <p>The Applicant is progressing the technical design of the trenchless crossing under the SRN as per the mandated procedure stipulated in “DMRB CD622 – Managing Geotechnical Risk” guideline (Standards for Highways, 2020) , which provides an outline for the crossing design evolution and requires design stages to be certified by a Designers Geotechnical Advisor (DGA), who is approved by the overseeing organisation (NH). Each design stage report requires approval by the Overseeing Organisation’s Geotechnical Advisor (OOGA). The Applicant has engaged with NH technical team on the proposed crossing of the SRN and provided the first of design stage reports being the “Statement of Intent” (Sol). NH’s OOGA has approved the Sol report which has since been certified and finalised. The OOGA has also confirmed that there are no technical concerns at this stage (Email from Iain Robertson, 24 May). The Applicant will continue to progress the technical design for the trenchless crossing as per the CD622 guideline (Standards for Highways, 2020) and on this basis does not expect that there would be risks from geological displacement or settlement under the carriageway as these risks will be managed in cooperation with NH, who will need to approve technical designs and risk mitigation strategies.</p> <p>The works to construct the temporary access off the A27 are not to be carried out on the SRN itself, but rather land adjacent to it. The construction activity will be managed by the Construction Traffic Management Plan (CTMP), which will itself be subject to National Highways’ approval (Requirement 24 of the Draft Development Consent Order [REP4-004]).</p> <p><u>Response to paragraph 2.6:</u> The Applicant does not accept that there is a potential for serious detriment to the SRN as a consequence of the Proposed Development (see response to 2.3 above). The HDD method is proposed in order to minimise the impact on the SRN, removing any need to interfere with the surface of it.</p> <p>There is no justification for the Applicant to provide financial security in the form of a bond and cash deposit. Such a requirement would only be justified if the Proposed Development included works to the SRN, which is not the case in the Application. There is no potential for detriment to the SRN as there are no works to it.</p> <p><u>Response to paragraph 2.7</u></p>

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	<p>specifically says “such of the following drawings, specifications and calculations as are relevant to the specified works”. The Applicant has deleted some of the technical specifications, as it considers those particular aspects to not be relevant to the specified works, however given the openness of the proposed associated development, it cannot be said at this stage that those aspects of the definition are irrelevant. They may become relevant depending on what associated works are carried out. Further, and even if they are not relevant, they place no administrative burden on the Applicant as a result of the italicised and underlined part of the definition above.</p> <p>2.9 The Applicant has deleted the definition of “DBFO contract” and “highway operations and maintenance contractor”. Parts of the strategic road network are routinely managed by design build finance and operate contractors, who have primary responsibility for managing the asset. The purpose of these provisions is to ensure that, where the road subject to the specified works is managed under a DBFO contract, the highway operations and maintenance contractor can take the benefit of the protective provisions. Otherwise, any claim that the highway operations and maintenance contractor had against the Applicant by virtue of its stewardship of the asset would need to be through a claim made by National Highways and sub-recovered by the DBFO contractor. This is unnecessary, inefficient and creates a contractual risk to National Highways, as the DBFO contract does not cater for risks occasioned by third party development. To avoid a situation where National Highways has to attempt to agree a commercial arrangement with the Applicant in the future, the Order should simply include reference to the DBFO contractor now. This places no administrative burden on the Applicant. General (Paragraph 4)</p> <p>Works outside the Order Limits (Paragraph 6)</p> <p>2.10 The purpose of the provision is to reflect the existing law, in that where works are proposed to highway land which falls outside of the Order Limits, the Applicant will be required to seek the agreement of National Highways pursuant to a section 278 agreement, for example.</p> <p>Prior approvals and security (Paragraph 7)</p> <p>2.11 The Applicant has deleted sub-paragraphs (v) because due to a reference to non motorised users, however the part of the SRN impacted by the works includes highway verge and a path. The applicant has also deleted (f), (g) and (h) from paragraph 7(1), the effect of which removes an obligation on the Applicant to agree the maintenance regime in respect of the temporary access road and removes the requirement for National Highways to approve audit brief and CVs for road safety audits. It also has the effect of removing the need for the Applicant to provide collateral warranties from the designer and contractor of the cabling, the temporary access and any other associated development carried out on, over or under the strategic road network. We ask that this provision be reinstated to ensure that maintenance responsibilities are agreed with National Highways and that suitable contractual remedies are made available to National Highways in the event of a defect caused by the designer and/or contractor.</p> <p>2.12 The Applicant has deleted sub-paragraph (c) from paragraph 7(3) . The The primary effect of this change is to impose deemed consent provisions on National Highways, such that where a submission for approval has been made by the Applicant and a response is not received from National Highways within a certain period of time, the Applicant is permitted to treat the submission as approved. This could, for example, trigger the commencement of</p>	<p>It is not correct, in the Applicant's opinion, that National Highways should demand that the Applicant should provide a bond and cash deposit (albeit not justified on the facts) on the basis that to not do so would expose National Highways to future projects citing the current Applicant as precedent as a means to not commit to security. Any future application might include such financial security for National Highways should it be justified in those circumstances. It would not be correct to include onerous protective provisions, imposing significant financial obligation on the Applicant, in the context of the current Application that might potentially fetter the ability to deliver development, on the basis that a 'standard' approach should be taken to all protective provisions.</p> <p><u>Response to paragraph 2.8</u></p> <p>As explained in the response to paragraph 2.6 and 2.7, the Applicant does not agree that onerous provision should be included where not justified on the facts. As there are no works to the SRN that will be inherited by NH once complete as part of the Proposed Development, there is no requirement for a bond or cash surety. The Applicant has not deleted technical specifications from the definition of “detailed design information”.</p> <p><u>Response to paragraph 2.9</u></p> <p>The Applicant submits that as a DBFO contractor is not contracted on this part of the SRN, the definition (and operative provisions) are not relevant. It is not appropriate that unnecessary provision should be included in the Draft Development Consent Order [REP4-004] to future proof against how those contracts might be run.</p> <p><u>Response to para 2.10 (land outside Order Limits NH PPs para 4)</u></p> <p>It is generally the case that the DCO will not authorise works outside of the proposed DCO Order Limits. The exception for this is article 43 (Felling or lopping of trees and removal of hedgerows) which authorises such work “within Order limits or near any part of the authorised project if the undertaker reasonably believes it to be necessary”. Such works are unobtrusive, and may be required in connection with, for example, visibility splays. The Applicant submits that these works are critical in the delivery of the authorised project and should not be delayed by the inclusion of a preventative protective provision to enter into agreement with National Highways. The authorised works comprise a Nationally Significant Infrastructure Project (NSIP) to be consented by a single instrument as is consistent with National Policy and the Planning Act 2008. The Draft Development Consent Order [REP4-004] contains the relevant powers to deliver this, as should be the case to achieve a streamline delivery of the NSIP.</p> <p><u>Response to paragraphs 2.11 -2.12</u></p> <p>The nature of the proposed works do not justify (or require) the walking, cycling or horse wording assessment.</p> <p>The prior approvals that have been deleted by the Applicant are not considered relevant to the nature of the Proposed Development. Inclusion of them would have the effect of unnecessarily imposing a significant burden on the body delivering the Proposed works (to seek approval for something not necessary) causing unnecessary delay and cost increase.</p>

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	<p>works or relate to a road space booking process which would entitle the Applicant to take access. Given the associated safety concerns, National Highways does not consider this to be a reasonable imposition. National Highways requests that any interference with the strategic road network should be subject to its explicit consent with the ability to attach any necessary conditions. It is appreciated that the Applicant will not want undue delay in the delivery of a nationally significant infrastructure project but it is National Highways' position that this should not override safety concerns, particularly when those safety concerns relate to putting thousands of road users at risk. National Highways has approval processes in place for instances where third parties are looking to work on, or in the vicinity of, the strategic road network and do not consider it reasonable or necessary that this application should be permitted to bypass those approvals which have been put in place for very necessary safety reasons. National Highways has statutory responsibilities to support economic growth and to act reasonably as a public body. It should not be necessary to impose deemed consent provisions to ensure its engagement and a public body should not be forced to concede on a safety related point that would expose it to significant financial liability and reputational risk. It is imperative that due process is following in respect of signing off submissions for approval and given many of these responsibilities are outsourced to consultants who operate under service level agreements, it is not within the control of National Highways to expedite approvals. Further, the teams responsible for approving these submissions are currently dealing with a large number of live DCO applications and as such it is impossible to give each one the priority that they will all expect to receive. National Highways respectfully requests that the National Highways Protective Provision drafting is reinstated in full.</p> <p>2.13 The Applicant has amended sub-paragraph 8(3) (c) removing the requirement for the Applicant to ensure their client duties are undertaken to the satisfaction of National Highways and subparagraphs 8 (7) and 8(8) removing the ability of National Highways to serve notice on the Applicant if in the opinion of National Highways there is a danger to highway users to enable National Highways to carry out steps required and recover its expenditure from the Applicant. The Applicant has also removed sub-paragraph 8(10) requiring it to carry out maintenance including winter maintenance in the scope of operations agreed by National Highways. The Applicant has not confirmed the time scales for the works impacting the strategic road network there is no certainty that the works will necessarily be carried out during the summer months. This paragraph makes it clear that the Applicant must carry out all maintenance in accordance with the scope of maintenance agreed. For clarification, this is not a requirement on the Applicant to maintain the carriageway or highway apparatus found on the A27 or A23. It is an obligation to maintain those parts of the network which they are interfering with until such time as the works have been signed off by National Highways.</p> <p>2.14 The Applicant has heavily amended paragraph 9 of the National Highways Protective Provisions without providing much justification for the amendments and as such it is difficult to respond substantively other than to provide clarity on why the provision is drafted as it is.</p> <p>2.15 The costs which National Highways expect the Applicant to cover under this paragraph are as follows: (a) The checking and approval of the technical information required under paragraph 7(1); (b) The supervision of the specified works as they relate to the strategic road network; (c) The checking and approval of the information required to determine approvals</p>	<p>Collateral Warranties are not relevant as the proposed works will not involve any construction on the SRN that National Highways will subsequently take responsibility for. Requirements for collateral warranties only arises when the DCO contractor is carrying out physical changes to the SRN.</p> <p>The Protective Provisions submitted by the Applicant (Appendix A) include proportionate and comprehensive approvals to be given by National Highways, based on the nature of the works.</p> <p>The Applicant cannot agree to any National Highways approvals required in advance of the ability to commence the specified works, being deemed refused (as has been submitted by National Highways) as this would risk unreasonable delay the Proposed Development. The NSIP has the support of National Policy as set out above, and the Applicant does not accept National Highways' position regarding safety concerns should take precedence, particularly based in the fact that the Protective Provisions submitted by the Applicant would afford National Highways the ability to include reasonable conditions to any approval given. To include a deemed refusal provision has the potential result of every request for approval being referred to dispute resolution procedure, causing delay and expense.</p> <p><u>Response to paragraph 2.13</u> The amendments made include a requirement that National Highways act reasonably, which is considered proportionate given that the obligation is in the context of undertaking works in accordance with the design specifications. Safety considerations will be taken into account in the design specifications. As there are no works on the SRN it would not be appropriate for National Highways to step in and carry out those works for any reason (HDD drilling; construction access off the SRN).</p> <p>Duplication in drafting has been removed. Winter maintenance provisions are not relevant as none of the proposed works will be impacting the surface of the SRN.</p> <p><u>Response to paragraphs 2.14 - 2.16</u> The Applicant has removed costs provisions relating to land transfers as there are none. (a) to (c) and (d) are included in the Protective Provisions submitted by the Applicant.</p> <p>Provision relating to a s.278 Agreement is not relevant. The Proposed Development is an NSIP and as such the statutory authority for the proposed works is the Draft Development Consent Order [REP4-004].</p> <p><u>Response to paragraph 2.17</u> The defects liability period is not relevant as there are no works to the SRN. The Protective Provisions submitted by the Applicant include provision for condition survey (paragraph 10) which is proportionate in the circumstances and is the approach adopted in the HyNet DCO.</p>

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	<p>under the Order; (d) Any costs incurred by National Highways in relation to the transfer of any land required for the specified works; (e) All legal and administrative costs and disbursements incurred by National Highways in connection with the specified works; (f) Any value added tax incurred and for which it cannot obtain reinstatement from HM Revenue and Customs.</p> <p>2.16 National Highways say that none of these items are unusual in the context of cost recovery for highway related works and it would be expected that a developer would pay for these costs in relation to works authorised under a section 278 agreement. In particular, it may be necessary for technical consultants to be instructed to review the information required to determine approvals under the Order. The approval of this information should not be at National Highways' cost where, but for the Applicant's scheme, that cost would not have been incurred. Paragraph 13 (Defects Period)</p> <p>2.17 The Applicant has deleted Paragraph 13 in its entirety. This paragraphs is necessary because the Applicant in carrying out works on, over or under the strategic road network may cause damage to it which must be rectified by the Applicant in accordance with the defects period. National Highways have emergency powers under the National Highways Protective Provisions to go onto the land to rectify anything that is likely to cause a safety issue and to recover the cost from the Applicant. Again, it is reasonable to expect that the Applicant will rectify any defects in works it has completed within a reasonable time period. Paragraph 15 (Security)</p> <p>2.18 The Applicant has deleted paragraph 15 of the National Highways Protective Provisions on the basis that it does not accept that these provisions ought to have statutory effect. The Applicant has suggested it would be willing to enter into a side agreement with National Highways, however to date no such side agreement has been negotiated by the parties. To protect National Highways' position and for the reasons given, we respectfully request that the financial provisions in the form of the bond and the cash deposit are reinstated. These provisions are of vital importance to protecting the integrity of the strategic road network and the safety of road users. Paragraph 17 (Insurance)</p> <p>2.19 The Applicant has deleted paragraph 17. From National Highways' perspective, the Applicant is proposing a major interface with the strategic road network and consequently, it should have in place a policy of insurance to cover public liability that arises from the execution of the specified works. This provision is typical on protective provisions generally and there is no reason why this should not apply to interfaces with the strategic road network. We request that this provision is reinstated. Paragraphs 18, 19 and 20</p> <p>2.20 The Applicant has deleted paragraphs 18 (Indemnity) 19 (Maintenance of the Specified Works) and 20 (Land) and National Highways would ask that these paragraphs are reinstated. These paragraphs are required to protect the public purse from costs, claims etc as set out in paragraph 18. Paragraph 19 requires the Applicant to provide National Highways with appropriate notice and deals with the process where the Applicant may need to occupy road space on the SRN. Paragraph 20 was deleted because the Applicant says they are not seeking to acquire land. However National Highways would ask that this paragraph is reinstated as whilst the Applicant is not seeking to acquire land, they are looking to acquire new rights over the land. Paragraph 21. The Applicant has amended sub-paragraph 21(3) but it is not clear to National Highways why this amendment was sought by the Applicant.</p> <p>3 Conclusion</p> <p>3.1 National Highways requests that the National Highways standard Protective Provisions are included in the Order.</p> <p>3.2 Should the Examining Authority have any further questions regarding these submissions, National Highways will be happy to answer them</p>	

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2.25.15	<p>APPENDIX 4 Legal Opinion of Ruth Stockley KC endorsed 12 April 2024 – Regulation of Streetworks on the Strategic Road Network</p> <p>Introduction</p> <p>1. I am asked to advise National Highways Limited (“NH”) upon issues arising over the application of the statutory provisions regulating street works contained in Part III of the New Roads and Street Works Act 1991 (“NRSWA”) to developments involving infrastructure being placed in or under the Strategic Road Network (“SRN”) in the context of applications for a Development Consent Order (“DCO”).</p> <p>NRSWA 1991</p> <p>2. Part III of NRSWA reformed previous legislation contained in the Public Utilities Street Works Act 1950 which governed the exercise of the various public utilities’ powers to undertake street works. It sought to simplify and reform procedures governing matters such as the notification of street works, their supervision and reinstatement, and to appropriately balance the interests of the rights of highway users, the interests of the highway authority with responsibility to maintain the highway and the free flow of traffic over it, the rights of consumers of services supplied under or over the highway, and the interests of undertakers with apparatus in the highway. It is the regulation of the relations between those various persons and bodies which NRSWA seeks to achieve by conferring controls on the street authority in respect of all street works.</p> <p>3. That fundamental purpose of NRSWA is important to recognise. It is not concerned with granting rights or interests in land to enable the placing of apparatus in the highway; such rights are conferred by other legislation or by agreement or otherwise. Instead, it is concerned with regulating the execution of physical works in the highway. It brings all street works, other than roadworks carried out by or on behalf of the highway authority, under the same area of control. Thus, persons or bodies who may be granted licenses by the street authority to undertake such street works are required to follow the same procedures as undertakers acting under statutory powers.</p> <p>Street Works</p> <p>4. Section 48 of NRSWA provides the definition of a “street”, “street works” and “undertaker” for the purposes of Part III. It states as follows:</p> <p><i>“(1) In this Part a “street” means the whole or any part of any of the following, irrespective of whether it is a thoroughfare—</i></p> <p><i>(a) any highway, road, lane, footway, alley or passage,</i></p> <p><i>(b) any square or court, and</i></p> <p><i>(c)) any land laid out as a way whether it is for the time being formed as a way or not.</i></p> <p><i>Where a street passes over a bridge or through a tunnel, references in this Part to the street include that bridge or tunnel.</i></p> <p>...</p> <p><i>(3) In this Part “street works” means works of any of the following kinds (other than works for road purposes) executed in a street in pursuance of a statutory right or a street works licence—</i></p> <p><i>(a) placing apparatus, or</i></p>	<p>National Highways has submitted a generic Counsel opinion which dates from April 2023 without any explanation as to how it applies to the matters in issue with regards the Draft Development Consent Order [REP4-004]. The Applicant is aware that National Highways has done the same in respect of the examination of other recent applications, including the Cambridge Waste Water Treatment Plant Relocation Order (currently at decision stage); the HyNet DCO and the National Grid (Yorkshire Green Energy Enablement Project) DCO (both now made).</p> <p>The Applicant assumes that National Highways contend that the Applicant does not require an easement for its underground cable infrastructure below the A27 because the Applicant should instead rely upon the provisions in NRSWA. The Applicant also assumes that National Highways contend, as it has in recent examinations such as those referred to above, that it has a policy position not to grant land rights over or under its strategic road network.</p> <p>With regards to NRSWA, the Applicant submits that National Highways does not appreciate the nature and nationally significant importance of the infrastructure which is to be laid under the strategic road network. The Proposed Development does not comprise a business-as-usual utility connection which runs in the length of the highway in common with other linear infrastructure such as water pipes, electricity distribution cables and telecommunications cables. The latter are the type of assets intended to be laid and managed under NRSWA, primarily comprising of works located ‘in’ the street. NRSWA provides the regulatory regime intended to secure the efficient co-ordination of such street works, co-ordinated under a street works licence regime, which is managed by the street works authority, in this case NH.</p> <p>In contrast, the Proposed Development is Critical National Priority infrastructure which will cross underneath a short stretch of the A27 which forms part of the strategic road network. The Applicant requires land rights to protect its nationally significant infrastructure from interference and damage, and, as acknowledged in the Ruth Stockley KC opinion, NRSWA does not grant any land rights nor provide any protection for the Applicant’s assets. It is simply: ‘concerned with regulating the execution of physical works in the highway’.</p> <p>The Applicant requires land rights:</p> <ul style="list-style-type: none"> • Which are registrable at the Land Registry, ensuring that the existence of the infrastructure and the protections afforded to it are discoverable on land ownership searches; • Which are enforceable via the Courts if necessary in the event of a breach of those rights or damage to the infrastructure; • Which are transferrable to the OFTO who will operate the Proposed Development; • Which do not contain and unacceptable ‘gap’ in protection where the cable route passes under the A27; and • Which do not rely upon NH to protect the apparatus from interference by others. <p>In any event, NRSWA cannot apply to the land rights, including temporary possession powers, sought by the Applicant over land parcels that aren’t adopted highway, namely Plot 7/18.</p>

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	<p><i>(b) inspecting, maintaining, adjusting, repairing, altering or renewing apparatus, changing the position of apparatus or removing it, or works required for or incidental to any such works (including, in particular, breaking up or opening the street, or any sewer, drain or tunnel under it, or tunnelling or boring under the street).</i></p> <p>...</p> <p><i>(4) In this Part “undertaker” in relation to street works means the person by whom the relevant statutory right is exercisable (in the capacity in which it is exercisable by him) or the licensee under the relevant street works licence, as the case may be.</i></p> <p><i>(5) References in this Part to the undertaker in relation to apparatus in a street are to the person entitled, by virtue of a statutory right or a street works licence, to carry out in relation to the apparatus such works as are mentioned in subsection (3); and references to an undertaker having apparatus in the street, or to the undertaker to whom apparatus belongs, shall be construed accordingly.”</i></p> <p>5. Thus, a “street” is very widely defined and includes “any highway”.</p> <p>6. The definition of “street works” is then of particular note. It includes any works executed in any highway pursuant to a statutory right or street works licence involving placing apparatus in the highway and any incidental works. Significantly, the reference to works “executed in a street” must be interpreted in accordance with the definitions provision for the purposes of Part III, namely s.105(1), which provides as follows:</p> <p><i>““in,” in a context referring to works, apparatus or other property in a street or other place includes a reference to works, apparatus or other property under, over, across, along or upon it” (Emphasis added).</i></p> <p>That is consistent with the definition of “street works” including “tunnelling or boring under the street”. Hence, it matters not whether the works in question are physically in, over, on or under the highway; they are still “street works” governed by Part III of NRSWA.</p> <p>7. It therefore follows, for example, that works involving trenchless technology which would not involve the actual breaking up of the surface of a highway in order to place infrastructure under the highway would still amount to “street works” within the meaning of s.48(3) and would be governed by and regulated by NRSWA.</p> <p>Statutory right or street works licence</p> <p>8. The next point of significance is that street works can only be undertaken by an “undertaker”, namely a person or body which has the requisite statutory right or street works licence to carry out those works. If and when that statutory right exists or licence has been granted, the street works can then be undertaken in principle, BUT they still remain subject to the regulation contained in NRSWA by the street authority.</p> <p>9. Hence, statutory undertakers have such express statutory rights contained in legislation applicable to their undertaking. By way of example, there are powers for undertakers to lay their apparatus in, under or over a highway contained in s.158 of the Water Industry Act 1991, Schedule 4 to the Electricity Act 1989, Schedule 4 to the Gas Act 1986, and Schedule 3A to the Communications Act 2003. Nonetheless, although statutory undertakers have such statutory rights, the physical works involved in exercising those powers are then regulated by the street authority pursuant to NRSWA. That “statutory right” means that no acquisition of the land in which such apparatus is to be laid is required by those undertakers. It also means that they do not require a street works licence. However, it does not result in the regulation</p>	<p>The land rights sought by the Applicant are proportionate to the works required and the exercise of those proprietary rights must be in compliance with the protective provisions, thereby ensuring that National Highways’ undertaking does not suffer detriment. National Highways has not offered any justification as to why the Applicant should not secure the land rights it reasonably requires, nor has National Highways identified any detriment that would arise from the existence of and/or exercise of the land rights themselves. The points National Highways has raised regarding drilling, safety and geological displacement have no bearing on the land rights sought and are governed by the protective provisions as explained above. In the present case, Rampion 2 will not impact the SRN other than traffic management required in the construction of a single temporary construction access off the A27 and HDD cabling under the carriageway. This will not comprise serious detriment to the strategic road network (SRN).</p> <p>The Applicant notes that orders and enactments such as the following have granted land rights to applicants in respect of the strategic road network and there is no justification for National Highways’ blanket in-principle objection to the same:</p> <ul style="list-style-type: none"> • Hynet DCO- permanent acquisition of the subsurface; • Yorkshire Green DCO – easements; • High Speed Rail Acts 2017 and 2021 – freehold sub-surface and easements; • Thames Tideway Tunnel DCO– freehold sub-surface and new rights (albeit some of the highways were the strategic responsibility of Transport for London, but equivalent principles apply). <p>The Applicant therefore submits that National Highways’ refusal to grant land rights to the Applicant is not tenable.</p>

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	<p>set out in NRSWA not applying. On the contrary, NRSWA's very objective is to enable the street authority to properly control and regulate all such street works.</p> <p>10. If no such statutory right exists, an application may be made to the street authority for the requisite street works licence. Section 50(1) of NRSWA provides:</p> <p><i>“The street authority may grant a licence (a “street works licence”) permitting a person—</i> <i>(a) to place, or to retain, apparatus in the street, and</i> <i>(b) thereafter to inspect, maintain, adjust, repair, alter or renew the apparatus, change its position or remove it, and to execute for those purposes any works required for or incidental to such works (including, in particular, breaking up or opening the street, or any sewer, drain or tunnel under it, or tunnelling or boring under the street).”</i></p> <p>The same s.105(1) definition must be applied in respect of such a licence permitting a person to place apparatus “in” the street, namely it includes the placing of apparatus “under” the street.</p> <p>11. Again, that provision merely enables the street authority to grant a licence to a person to execute the works required so that they are then an “undertaker” within the meaning of s.48 of NRSWA. Thereafter, the carrying out of such works will be subject to the control of the street authority applying the provisions contained in NRSWA.</p> <p>12. Thus, if a statutory right to place infrastructure in, on, above or below a highway is conferred by a DCO, the subsequent execution of that right, namely the carrying out of the requisite physical “street works”, remains subject to the regulatory provisions of NRSWA to be applied by the street authority. It is therefore important that such is reflected in the terms of the DCO and all requisite street works are recorded as such.</p> <p>Nature of regulation</p> <p>13. As to such regulation, Part III of NRSWA, together with the regulations and codes of practice made thereunder, then provides detailed provisions to be complied with when any street works are being executed, whether pursuant to a statutory right or a street works licence. They also impose duties on the street authority to co-ordinate the execution of such works. Such regulation on undertakers promotes safety, and further, for example, avoids unnecessary delays or obstructions, protects other apparatus in or below the street, and ensures adequate reinstatements, with penalties imposed for noncompliance. NRSWA also designates certain streets as being subject to special controls. Hence, special roads, such as the SRN, are “protected streets” under s.61. The supervisory control over that statutory regulation is conferred on the street authority and NRSWA must be complied with by any undertaker undertaking “street works”, irrespective of that undertaker's proprietary or statutory rights to lay apparatus in, above or under a highway.</p> <p>Depth of highway</p> <p>14. Finally, given that the regulation imposed by NRSWA applies to the execution of all “street works”, and as street works are defined as including the placing of apparatus “under, over, across, along or upon” the street (see s.105(1) definition), it is immaterial to the application of NRSWA whether the apparatus is placed within the surface of the highway or in the subsoil below. Similarly, it is immaterial whether the undertaker has a proprietary interest in the land in which the apparatus is to be installed, a statutory right to install it or the landowner's consent to do so. Provided the apparatus is to be installed in, under, above or</p>	

Ref	Deadline 4 submission	Applicant's comments
	<p>on a highway, the physical works required to so place the apparatus comprise “street works” to which the NRSWA controls remain applicable in any event</p> <p>15. Subject to the above, in considering the depth of a highway for which NH is the highway authority, that crucially depends upon the context in which the issue is being raised. Lord Briggs pointed out in <i>Southwark LBC v Transport for London</i>, 1 which was concerned with the construction of a property transfer order between two highway authorities:</p> <p><i>“There is in my view no single meaning of highway at common law. The word is sometimes used as a reference to its physical elements. Sometimes it is used as a label for the incorporeal rights of the public in relation to the locus in quo. Sometimes, as here, it is used as the label for a species of real property. When used within a statutory formula, as here, the word necessarily takes its meaning from the context in which it is used.”</i></p> <p>The depth of a highway is therefore dependent upon the context in which the word “highway” is being used.</p> <p>16. Further, linked to the above, it is of note that the vesting of the surface of a highway maintainable at the public expense in the highway authority arises from the statutory vesting contained in s.263(1) of the Highways Act 1980. Yet, by virtue of s.263(2), that provision does not apply to the vesting of a trunk road in circumstances where the provisions of ss.265-267 instead apply. In respect of a transfer of the highway under s.265, it was emphasised by the Supreme Court in <i>Southwark</i> that the word “highway” for the purposes of a s.263(1) vesting had a different meaning to the word “highway” for the purposes of s.265. Hence, the “highway” transferred under s.265 would include land acquired for highway purposes in the vertical plane, such as by conveyance on compulsory acquisition for highway purposes, even if it extends beyond the zone of ordinary use. Section 265 is likely to apply to many highways which comprise the SRN in which case there would be no separate subsoil owner.</p> <p>17. Even in the s.263 sense, the zone of ordinary use which is vested in the highway authority will necessarily vary on a case by case basis. Lord Briggs stated in <i>Southwark</i> at [10]:</p> <p><i>“It is common ground that the zone of ordinary use is a flexible concept, the application of which may lead to different depths of subsoil and heights of airspace being vested in a highway authority, both as between different highways and even, over time, as affects a particular highway, according to differences or changes in the nature and intensity of its public use.”</i></p> <p>18. It follows that the depth of a highway in any particular case is fundamentally dependent upon the context in which the word “highway” is being used and the purpose in which the issue is raised. However, in terms of the application of the NRSWA, it has no particular relevance. Instead, irrespective of the depth at which apparatus is laid under a highway, and whether it is within the zone of ordinary use or within the subsoil below, the works involved in placing such apparatus under the highway amount to “street works” within the meaning of s.48(3) of NRSWA and are therefore subject to the control and regulation of the provisions of NRSWA by the street authority at the time those works are carried out. That is also the</p>	

Ref	Deadline 4 submission	Applicant's comments
	<p>position irrespective of whether the works involve breaking open the surface of the highway, as that is not a pre-condition to the works being "street works" within the meaning of s.48(3). 19. I advise accordingly, and if I can be of any further assistance, please do not hesitate to contact me.</p>	

Table 2-26 Applicant's comments to Simon Kilham's Deadline 4 submissions

Ref	Deadline 4 submission	Applicant's comments
2.26.1	Good morning, my name is Simon Kilham, I am a Farmer at Guessgate Farm, part of the Wiston Estate. My Tenancy is an FBT (Farm Business Tenancy).	<p>It is understood that Mr Kilham is a contract farmer and that, as per the tenancy schedule provided by the Wiston Estate, he has a Farm Business Tenancy (FBT) over Guessgate Farm. The Applicant has requested a copy of the FBT agreement from the Wiston Estate on 20 October 2023 (via email) and in verbal meetings since then and from Mr Kilham in both Compulsory Acquisition Hearing (CAH) 1 and within the 8.66 Applicant's Comments on Deadline 3 Submissions [REP4-070] This has yet to be supplied, having been requested so as to clarify the rights that Mr Kilham will have associated with the occupation of the land subject to the Farm Business Tenancy (FBT) that is impacted by the proposed DCO Order Limits. Confirmation has also been sought as to whether Mr Kilham provides contractor services to his landlord or any other landowner affected by the scheme (such as Buncton Manor Farm). The above has been sought so as to obtain a clear understanding of the impact that the project may have on Mr Kilham's farming operations in the vicinity of the project which will enable discussions to take place with Mr Kilham so as to mitigate the impact of the proposed works. It is understood that Mr Kilham has been in occupation of some of the land at the Wiston Estate for around 20 years on various agreements.</p>
2.26.2	To date I have not received Heads of Terms, or any correspondence as to when they are likely to arrive or their content. As a farmer I have rights, which need to be discussed and legally protected. If this is not achieved, I could end up in a legal fight with my Landlord, which is wholly incorrect and should not be allowed to happen.	<p>Discussions have been ongoing with the landowner, the Wiston Estate, in connection with the Heads of Terms. In May 2024, a copy of the Tenant consent form was sent to Mr Kilham and his agent. Reasonable agent fees and, as appropriate, solicitor's fees will be paid in connection therewith on completion of the tenant consent form. This was explained within the email sent to Mr Kilham on 31 May 2024.</p> <p>The Applicant has requested a copy of the FBT agreement from the Wiston Estate. On receipt of the details of the FBT agreement, should the FBT provide Mr Kilham with the necessary rights that would mean he is in occupation during the works, then discussions will be held with interested parties, being the Wiston Estate and Mr Kilham in connection with the impact that the works will have on farming operations and rights associated with compensation payable for crop loss and disturbance.</p> <p>On 3 July 2024, the Applicant spoke with Mr Kilham to offer a site meeting with an Agricultural Liaison Officer (ALO) from another project. The Applicant is hopeful that Mr Kilham will be able to join a meeting with the ALO and the Applicant on 18 July 2024, the purpose of which is to explain:</p> <ul style="list-style-type: none"> • the practical steps the Applicant can take to minimise disturbance to farming the rest of the land. • how crossing points are designed/managed • how the Applicant will manage the water during construction including pre and post construction drainage designs. • Reinstatement methodologies of the land post construction. • Communicate previous experiences from a similar project to the land interest.

Ref	Deadline 4 submission	Applicant's comments
2.26.3	Rampion negotiated a Licence with myself for the purpose of surveys. They know full well I am a t at Guessgate Farm and should be dealing with me direct with regards to my Heads of Terms. This has never been discussed in the four years of supposed consultation.	The Applicant understands that Mr Kilham is in occupation of some of the land owned by the Wiston Estate. Discussions and negotiations associated with the Wiston Estate Heads of Terms are ongoing. The Applicant has, and will continue to, negotiate with the Wiston Estate to acquire the land and rights in land necessary for the Proposed Development, as explained in the Statement of Reasons [APP-021] and the Land Rights Tracker [REP3-010] (in compliance with paragraphs 24-26 of the CA Guidance). Once concluded, as required, further discussions on Heads of Terms and the Tenant Consent requirement and mitigation measures will be progressed with Mr Kilham. The Land Engagement Report for Mr Kilham at Document reference 4.6.5 sets out a detailed record of communications since the Applicant's first contact.
2.26.4	Rampion have failed to protect me as a Farmer. I am being lead down a path I do not want to go down. Rampion need to resolve this matter, otherwise how can anything progress.	The Applicant is in discussions with the Wiston Estate regarding the Heads Terms and Tenant Consent form associated with the requirement for an Option and a Deed of Easement with associated consideration.
2.26.5	Good evening my name is Simon Kilham. I am a farmer at Guessgate Farm on the Wiston Estate. We are a mixed farm, cattle, sheep, grass and arable	The Outline Code of Construction Practice [REP4-043] sets out the management measures that will apply to all works carried out within the onshore part of the proposed DCO Order Limits. Mitigation measures set out in the Outline Code of Construction Practice Parts A or B [REP4-043] (updated at Deadline 4) and the Commitments Register [REP4-057] (updated at Deadline 4) will reduce the impact of the Proposed Development on land retained by landowners and occupiers.
2.26.6	The cable route severs the farm by going through three fields and an access track to lower fields. Whether Rampion is of national importance I have no view, but I have to object because it is already having a negative effect on me financially and it has not even started.	<p>The construction corridor will be fenced on all sides, with stock-proof fencing used where farming practices require. At designated points along the route, identified through consultation with The Wiston Estate and as appropriate Mr Kilham, gated crossing points will be provided to facilitate access across the working corridor for farming practices, such as relocating livestock for grazing or driving farming machinery.</p> <p>Where an access right is restricted discussions will be held with Interested Parties to resolve a way forward that may be acceptable to all parties which could include: -</p> <ul style="list-style-type: none"> • A temporary realignment of the access; • A temporary stop up of the access between identified timeframes; • Unlimited access for emergency vehicles to be maintained. <p>Where practicable an alternative route of access will be provided.</p> <p>Following consultation with Interested Parties reasonable accommodation works, such as crossing points, will be provided where practicable for agricultural land holdings and farming premises affected by the Proposed Development. This will ensure that the effects of the construction works are mitigated particularly with respect to access so as to mitigate the impact of the proposed works on farming practices. Through ongoing consultation and discussions with Mr Kilham, the effects on the operation and future viability of his agricultural holdings and businesses will be mitigated.</p> <p>Subject to the confirmation of tenancy details, where the mixed farming business (which includes arable wheat, barley and maize in a rotation, with grass for grazing and mowing) has been adversely affected by the project, there would be the ability for Mr Kilham to claim</p>

Ref	Deadline 4 submission	Applicant's comments
		<p>compensation for disturbance. This may include direct financial losses (which may be equivalent to business profits), that have been unavoidably incurred as a direct result of the construction works. Claims would be considered where it can be shown that the physical works have adversely impacted the business. A claim for temporary losses would be considered where evidence of losses can be shown to have been caused as a direct consequence of the works through accounting records which will need to be provided and substantiated along with any other evidence.</p>
2.26.7	<p>Rampion have not followed correct consultation guidelines, which is leaving my business in a very vulnerable position. They do not understand the negative impacts the project will have on my farming business. They pay lip service only and then either do nothing or do what they like, thinking they own the place and that I have no rights as a Farmer. For example: -</p> <ul style="list-style-type: none"> • Stocking rates of cattle and sheep – Where do Rampion think my animals will live whilst this is going on? • Do I cut numbers on the farm as forage and grazing acres will be reduced? • Will Rampion pay for or find me the lost forage? <p>We sell hay and straw, will Rampion reimburse for loss of output.</p>	<p>As per reference 2.26.6 above, the Applicant, through ongoing consultation and discussions with Interested Parties, will look to mitigate the effects of the works on the operation and future viability of agricultural holdings and businesses. Claims for crop loss and disturbance that can be substantiated and proven to be caused as a direct consequence of the works, which may include direct financial losses, will be considered and as appropriate paid in accordance with the Compensation Code.</p> <p>Where there is reduced production as a direct consequence of the works and mitigation of financial impacts are identified, which leads to financial loss, compensation will be considered in line with the Compensation Code and the rules set out in Section 5 of the Land Compensation Act 1961 together with supporting legislation (Chapter 20: Soils and agriculture, Volume 2 of the Environmental Statement [APP-061]).</p> <p>Subject to clarifying the nature and term of Mr Kilham's tenancy, and how this may be affected by the works, the Applicant will discuss the anticipated impact on his business operations prior to, during and after completion of the works. This would include the effect on livestock stocking rates and how this will be mitigated and as appropriate compensated in terms of the additional cost of grazing and / or forage and direct impact on income streams from farming operations to include sale of hay and straw.</p>
2.26.8	<p>No formula for the above has been forwarded to me to view, discuss and iron out any problems.</p>	<p>Engagement with Mr Kilham will continue to ensure that the impact of the works on the business is minimised as far as reasonably practicable and where appropriate compensated. The impact of the works will be temporary and minimised by good working relationships and practices. The Applicant has requested a meeting via email on 31 May 2024 and 18 June 2024. The Applicant has not yet had confirmation of this meeting. As a result, the Applicant called Mr Kilham and spoke with him on 3 July 2024 at 10:33 to suggest a meeting on site on 18 July 2024, when there will be an Agricultural Liaison Officer (ALO) on site in Sussex (please see 2.26.2 above). Mr Kilham advised he would be in touch after he had spoken with his agent and the Applicant is therefore awaiting a response.</p>
2.26.9	<p>It feels to me, you get what you are given, like it or lump it, this is wholly unacceptable.</p>	<p>The Applicant will strive to continue to have active engagement with Mr. Kilham to minimise and mitigate the affect that the works will have on his business. There is a Statutory basis for the payment of compensation in accordance with the Compensation Code.</p>
2.26.10	<p>In my situation I have to pay rent to my Landlord and then be reimbursed by Rampion.</p>	<p>On the understanding that there is a tenancy agreement in place with the landlord, and assuming Mr Kilham is still in occupation of land affected by the works pursuant to such a tenancy, then he will still need to pay rent to his landlord. However, losses incurred by Mr Kilham as a direct consequence of the works will be reimbursed in accordance with the compensation code.</p>

Ref	Deadline 4 submission	Applicant's comments
		Please see reference 2.26.11 above.
2.26.11	To date no acknowledgement of this has happened nor time scale of frequency of payments to myself. I do not wish to be the Bank of Rampion, nor should I have to be.	Mr Kilham would not be expected to be the “Bank of Rampion”. Were compulsory powers of acquisition exercised there is the ability for Mr Kilham to make a claim for compensation as referred to above and to request an advance payment of compensation under Section 52 of the Land Compensation Act 1973 being 90% of the agreed compensation or acquiring authorities’ assessment of the compensation due. This is calculated from the date of notice of entry or general vesting declaration or if later, within 2 months of the later of the date of receipt of the claim or the date any further information has been requested. If the estimate is subsequently found to be either too low or too high an appropriate adjustment will be made. The Applicant would be happy to explain these processes further to Mr Kilham.
2.26.12	Parts of our farm are in environmental schemes, hedgerows, ditches, cropping. There is no mention how these will be managed or protected so we continue to comply to the scheme.	The Applicant will discuss the impact of the Proposed Development on Environmental schemes with the land interest. Compensation may be payable where justified in accordance with the Compensation code.
2.26.13	At present Rampion have not engaged with me on any of these matters, and by all accounts, reading other people’s submissions, I am not alone.	Please see response within Table 2-29 of Applicant’s Comments on Deadline 3 Submissions [REP4-070] which summarises the engagement with Simon Kilham and the Land Engagement Report (Document Reference: 4.6.5) submitted at Deadline 5.
2.26.14	I have no idea of how compensation will be calculated or how often payments will be made. I am not sure my business could withstand non payment of losses or a protracted fight to receive them.	Please refer to references 2.26.9, 2.26.10 and 2.26.11 above.
2.26.15	As with any project we do need to plan, even a temporary project like Rampion, although 2 to 3 years is a long time on a farm.	<p>The Applicant confirmed that it will keep Mr Kilham apprised throughout the process and the Outline Code of Construction Practice [REP4-043] contains commitments relating to the Agricultural and Land Liaison Officer(s) (ALLO) whose role will involve detailed engagement with Mr Kilham. As the project approaches the construction phase, work will progress on the Outline management plans, in particular: -</p> <ul style="list-style-type: none"> • the stage specific Codes of Construction Practice (CoCPs) • the Agricultural Liaison section of the Outline Code of Construction Practice [REP4-043] (paragraph 2.6); and • (of particular relevance Section 2.2) (Outline Construction Method Statement, as updated at Deadline 5 [APP-255]). <p>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.</p> <p>The project team will be in contact with Mr Kilham to ensure that as required consultation is completed pre construction so as to mitigate the impact of the works on farming operations and financial implications.</p> <p>An Agricultural and Land Liaison Officer (ALLO) (or person of similar title) will be employed to assist in the day-to-day liaison between Mr Kilham, the Applicant and their contractor in advance of and for the duration of the project construction phase. They will oversee the works being delivered in compliance with legal agreements, consents and approved construction</p>

Ref	Deadline 4 submission	Applicant's comments
		<p>methodologies so as to mitigate disruption to agricultural operations particularly where they intersect with agricultural land or rural environments. Other duties to be conducted by the ALLO include the following:</p> <ul style="list-style-type: none"> • Liaison with Mr. Kilham to agree temporary, permanent and revised accommodation works; • Engagement with Mr. Kilham 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; • Monitor that the project carries out works in accordance with the various regulations and standards and the effectiveness of mitigation measures for activities that may affect agricultural land or operations; • Co-ordinate and oversee pre construction environmental, 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; • Contact details for the ALLO will be made available to Mr Kilham, who will be contactable throughout the contractors working hours. Outside of these times and in the event of emergency, out of hours contact details will be provided.
2.26.16	How can I do this with no heads of terms, no correct consultation and having no means of purposeful dialogue with Rampion to provide solutions to the problems above.	As above, details of the FBT and farming operations are awaited so that detailed discussions can be progressed in advance of any works starting on site. Recent meetings have been requested with Mr Kilham on 31 May 2024 and 18 June 2024.
2.26.17	Rampion have not committed to a fair and just procedure, which is transparent to all.	The Applicant will continue to strive to engage fully with all Interested Parties affected by the proposed DCO. This includes engagement with Mr Kilham and his agent, to progress active discussions and negotiations associated with Heads of terms, tenant consents and mitigation measures, to include specific issues raised by individual parties associated with the anticipated works, so as to reduce the impact on Interested Parties.
2.26.18	As it stands, I feel I will have to fight tooth and nail to receive any compensation owing.	Compensation will be paid in accordance with the Compensation Code as referred to above .
2.26.19	How can a decision on this application be made with so many unanswered questions.	The Applicant has sought to answer Mr Kilham's questions so far as practicable. Precise details about impacts and the quantum of compensation cannot be known at this stage. However, the Applicant has made extensive binding commitments, which are secured by requirements in the Draft Development Consent Order [REP4-004] , which will ensure that affected parties such as Mr Kilham are kept informed as detailed design and land requirements become clearer; that land requirements are kept to a minimum; that land outside of the construction corridor may still be accessed; mitigation measures will be employed where necessary; and land is reinstated and available for use after construction has completed.
2.26.20	If you are minded to back this application, could you please ensure there is a stringent, legal, timely, impartial process for effected parties to receive recompense.	Where losses are incurred by Mr Kilham appropriate compensation is payable to those entitled to claim under the relevant provisions of the Compensation Code as referred to above. Any dispute in respect of the compensation payable is to be determined through Alternative Dispute Resolution in order to seek to resolve any outstanding concerns that may relate to agreeing the amount of compensation payable, the proposed works and acquisition, as well as mitigation measures and accommodation works which may be adopted or undertaken. If agreement cannot be reached there is the ability to refer matters to the Lands Chamber of the Upper Tribunal. The Applicant would be happy to explain these processes further to Mr Kilham.

Table 2-27 Applicant's comments to Thomas Ralph Dickson's Deadline 4 submissions

Ref	Deadline 4 submission	Applicant's comments
2.27.1	<p>1. This is a written submission on behalf of Mr Dickson in respect of Deadline 4 as detailed in the Rule 8 letter. This submission references the statutory requirements under the Planning Act 2008 (the "Planning Act"), specifically Section 122, and the guidance provided within the Compulsory Purchase Order (CPO) Guidance (the "Guidance") as well as the following documents:</p> <ul style="list-style-type: none"> i. Ref. [AOC-020]: Comments on the Applicant's Pre-Application Consultation ii. Ref. [REP1-168]: Deadline 1 Submission – Written Representations (WRs) iii. Ref. [REP3-137]: Deadline 3 Submission – Comments on any further information/submissions received by Deadline 3 iv. Ref. [REP3-1338]: Submission – Responses to Written Questions (ExQ1) 	<p>Paragraph 11 of the Compulsory Acquisition (CA) Guidance (Ministry of Housing, Communities and Local Government (MHCLG), 2013) explains how the tests in section 122(2) of the Planning Act 2008 are to be met. With regards condition 122(2)(a), that the land is required for the development to which the development consent relates, the CA Guidance provides:</p> <p><i>"For this to be met, the applicant should be able to demonstrate to the satisfaction of the Secretary of State that the land in question is needed for the development for which consent is sought. The Secretary of State will need to be satisfied that the land to be acquired is no more than is reasonably required for the purposes of the development."</i></p>
2.27.2	<p>Legal Framework for Compulsory Acquisition</p> <p>2. Pursuant to the Planning Act, sections 122 to 134 outline the conditions under which a DCO may include powers for compulsory acquisition. Section 122 states that such powers can be authorised only if the land is:</p> <ul style="list-style-type: none"> i. Required for the development, ii. Required to facilitate or is incidental to the development, or iii. Replacement land to be given in exchange for the order land under Sections 132. 	<p>With regards condition 122(2)(b), that the land is required to facilitate or is incidental to the proposed development, the CA Guidance provides:</p> <p><i>"An example might be the acquisition of land for the purposes of landscaping the project. In such a case the Secretary of State will need to be satisfied that the development could only be landscaped to a satisfactory standard if the land in question were to be compulsorily acquired, and that the land to be taken is no more than is reasonably necessary for that purpose, and that is proportionate."</i></p>
2.27.3	<p>The effect of section 122 is to set two main pre-conditions to the inclusion of compulsory purchase powers in a DCO.</p>	<p>The Applicant seeks powers of compulsory acquisition to acquire new rights and a restrictive covenant (Cable Rights, a Cable Restrictive Covenant) and rights for an operational access over the Land Interest's land (Plots 24/17 & 25/2). These are required for the development to which the development consent relates, namely the proposed cable route works comprising Work no. 09. The Applicant also seeks to acquire a new right for an operational access over Plots 25/3, 25/4 & 25/5, which is required for Work no. 15.</p>
2.27.4	<p>First the decision-maker must be satisfied that the land is "required" for the stated purpose. The word "required" was included in section 226(1)(a) of the Town and Country Planning Act 1990 ("TCPA 1990") prior to its amendment by the Planning and Compulsory Purchase Act 2004. The meaning of the word "required" in that statute was considered by the Court of Appeal in <i>Sharkey and Another v Secretary of State for the Environment and South Buckinghamshire District Council</i> (1992) 63 P. & C.R. 332. McGowan LJ giving the leading judgment endorsed the approach taken by Roch J and stated:</p> <p><i>I agree with Roch J. that the local authority do not have to go so far as to show that the compulsory purchase is indispensable to the carrying out of the activity or the achieving of the purpose; or, to use another similar expression, that it is essential. On the other hand, I do not find the word "desirable" satisfactory, because it could be mistaken for "convenient," which clearly, in my judgment, is not sufficient. I believe the word "required" here means "necessary in the circumstances of the case."</i></p>	<p>The proposed compulsory acquisition of new rights and restrictive covenants therefore accords with the test in Section 122(2)(a). It is noted the Land Interest does not dispute the requirement for these works, nor the requirement for new rights and a restrictive covenant for those purposes.</p> <p>The Applicant acknowledges that the proposed DCO Order Limits contain flexibility over the final siting of works, which is controlled by the limits of deviation and the requirements of the Draft Development Consent Order [REP4-004]. This is an accepted approach for Nationally Significant Infrastructure Projects (NSIPs) and other linear infrastructure, and is one which has been accepted by the Secretary of State in many made orders, a number of examples of which are provided in the Applicant's response to Applicant's Response to Action Points Arising from Issue Specific Hearing 2 and Compulsory Acquisition Hearing 1 [REP4-074] CAH1 Action 6.</p>
2.27.5	<p>As referred to in the Deadline 3 Submission [REP3-137], in <i>Brown v Secretary of State for the Environment</i> (1980) 40 P. & C.R. 285 there is a very long and respectable tradition for the view that an authority that seeks to dispossess a citizen of his land must do so by showing that it is necessary.</p>	<p>Whilst there are areas with particular constraints which give rise to the need for wider Order Limits, that does not apply to the Land Interest's land, which is expected to require the standard 40m construction corridor and 15m easement. The Applicant seeks no greater flexibility in the</p>
2.27.6	<p>It follows that the second condition which has to be satisfied is that there is a compelling case in the public interest pursuant to Section 122 (3) of the Planning Act 2008. When considering a compelling case in the public interest, the Planning Act requires compliance</p>	

Ref	Deadline 4 submission	Applicant's comments
	<p>with the Human Rights Act 1998. This especially refers to Articles 1 and 8 of the European Convention on Human Rights, which safeguard the peaceful enjoyment of possessions and respect for private and family life. We have previously submitted information regarding this and do not seek to make a repeat submission [REP3-137]. As the Examining Authority is aware, this consideration becomes even more significant in light of Mr. Dickson's protected characteristics under the Equality Act 2010, as submitted [REP3-1338].</p>	<p>linear cable corridor than other comparable linear schemes. The degree of flexibility sought is proportionate to requirements of the Proposed Development and the impacts upon the Land Interest. A reduction in the Order Land in this location will materially prejudice the Applicant's ability to deliver the Proposed Development and the significant public benefits that it will bring. It is also noted that the Land Interest does not identify any part of the Order Land in its ownership over which rights are sought which it contends is not required for the Proposed Development.</p>
2.27.7	<p>The Guidance provides further clarification on these statutory requirements, emphasising the need for detailed justification for each parcel of land and the importance of negotiating with landowners to avoid compulsory acquisition where possible.</p>	<p>Furthermore, the Applicant has committed to minimise land take and to seek to agree appropriate mechanisms for the release or variation of any rights that may become surplus (Outline Construction Method Statement [APP-255], as updated at Deadline 5).</p>
2.27.8	<p>The Examining Authority will be conversant with R. (FCC Environment) v SSECC [2015] Env L.R. 22, in which the Court of Appeal considered the effect of the compulsory acquisition provisions.</p>	<p>The Applicant acknowledges that in principle it is open to the Secretary of State to find that there is an urgent need for development in compliance with the National Policy Statement (NPS) but then find that the section 122 compelling case in the public interest test is not met. However, the examples given in paragraph 11 of the judgment in the FCC case as circumstances where the decision-maker could conclude that there was no compelling case for compulsory acquisition despite an NPS having an established an urgent need for development do not apply to the Draft Development Consent Order [REP4-004]:</p>
2.27.9	<p>Examples of where compulsory acquisition may not be justified despite the project being supported by a national policy statement include (see FCC at [11]):</p> <ol style="list-style-type: none"> i. Where the land sought to be acquired exceeds what is necessary to construct the proposal; ii. The acquisition of a more limited right, rather than the entire land, would suffice; iii. The owner is willing to agree to a sale and accordingly it is unnecessary to compel him to do so; iv. Where, despite the relevant NPS not requiring the consideration of alternative sites for the purposes of deciding whether to grant development consent, the existence of an alternative would be relevant for the purpose of deciding whether there was a compelling case in the public interest for compulsory acquisition. 	<ol style="list-style-type: none"> i) The land proposed to be acquired is not excessive. General comments have been made by the Land Interest about the width of the Order Land or particular locations where there is greater flexibility but the Land Interest has not substantiated an argument that any part of the Order Land it owns is not required for the purposes in s122(2) of the Planning Act 2008; ii) The Applicant's land acquisition strategy is proportionate and, in the case of the Land Interest, seeks only the acquisition of rights/restrictive covenants rather than land. The Land Interest has not identified any part of the Order Land for which a lesser type of acquisition would suffice; iii) Whilst voluntary negotiations have been and are still being pursued with interested parties, the Land Interest is not currently willing to conclude a binding agreement as an alternative to compulsory acquisition; and iv) The Applicant has given extensive consideration to alternative options and routes, including those proposed by the Land Interest, and has provided sound reasons for rejecting them. v) The compelling case in the public interest for the compulsory acquisition powers sought in respect of the Land Interest's land is met. Further details as to the assessment of the compelling case in the public interest for the purposes of section 122(3) of the 2008 Act is provided in the Statement of Reasons which accompanied the Application [APP-021].
2.27.10	<p>In respect of points 1-4 above, the Applicant has failed to consider any of these points prior to submitting their DCO application.</p>	<p>The Draft Development Consent Order [REP4-004] does not therefore have any parallels with the scenarios envisaged in the FCC case. Moreover, it is not possible to meet the need for the Proposed Development without the requested powers of compulsory acquisition. The Applicant submits that this is not a situation where the Secretary of State can reasonably</p>

Ref	Deadline 4 submission	Applicant's comments
2.27.11	<p>Mr Dickson's individual circumstances mean the use of powers are further unjustified because:</p> <ul style="list-style-type: none"> i. The detrimental consequences on the functionality of his farming business and his farming practices designed to minimise the impact to the land. ii. The adverse effect on his ability to enjoy and plan his later years and retirement iii. The negative influence on his role within the farming community due to the adverse severance of his land. iv. The serious potential threat to his personal health, due to alterations in working practices that could greatly amplify the risk of injury as a result of the Applicant's proposed route and unsuitable proposed mitigation measurements to his personal circumstances. 	<p>conclude that there is no compelling case for compulsory acquisition despite an NPS having an established an urgent need for development.</p> <p>The Applicant has responded to these points in previous submissions 8.79 Applicant's Comments on Deadline 3 Submissions (CONFIDENTIAL) – Mr Dickson [REP4-080].</p> <p>It remains the case, notwithstanding the Land Interest's individual circumstances, including protected characteristics under the Equality Act 2010, that the Land Interest has not explained why or how the proposed acquisition and Proposed Development (comprising a buried cable) will have these alleged impacts; nor why the Applicant's proposed mitigation measures could not alleviate any such impacts should they arise.</p> <p>There is no clear evidence put forward by the Land Interest to demonstrate the alleged danger and/or disruption to life and livelihoods as a result of the Proposed Development. Emails to the Land Interest's agent dated 28 May and 30 May 2024 sought clarification of current farm management in an attempt to progress further discussions regarding programme and mitigation. The emails requested for example details of when cattle were expected to be kept on the land going forward noting that there were none currently on the land. The only response to this email has been a verbal comment that it is too wet for the Land Interest to have had cattle on the land this year. The Applicant understands that instead a crop of hay has been taken off the fields.</p> <p>The Applicant's process for the assessment of alternatives has applied a consistent approach which balances all material factors including those protected by statute. The Land Interest's needs and requirements, insofar as they are known, have been discussed in detail and the Applicant has gone to great lengths to propose additional mitigation such as the assistance of a stockperson. It is not clear why such an offer is not being taken up but the Applicant remains willing to engage in this discussion.</p> <p>The Applicant also submits that in the event that the Secretary of State finds that the Draft Development Consent Order [REP4-004] will have an impact upon persons with protected characteristics which cannot be fully mitigated, the Secretary of State is still entitled to find that the significant public benefits which will be delivered by the Proposed Development outweigh the interference with private rights and that there is a compelling case in the public interest for the making of the DCO.</p> <p>By way of example, the Applicant refers to the Secretary of State's decision to confirm two compulsory purchase orders made by the London Borough of Barnet to facilitate its Brent Cross Cricklewood regeneration scheme. The CPOs required the acquisition of (inter alia) 3 residential tower blocks which would necessitate the displacement of existing residents with protected characteristics. The Secretary of State concluded that it was not possible in practice to mitigate the potential negative impacts on such persons by modifying the orders, and agreed with the Inspector that to do so would threaten the benefits of the comprehensive regeneration. Please see paragraphs 50-54 of the decision letter which is Appendix G.</p>
2.27.12	<p>The precise details of Mr Dickson's circumstances have been addressed in prior submissions [REP1-168] [REP3-1338].</p>	

Ref	Deadline 4 submission	Applicant's comments
2.27.13	<p>All reasonable alternatives to compulsory acquisition must be explored and exhausted.</p> <p>The burden rests firmly on the Applicant. This includes modifying the scheme to minimise land acquisition and making genuine attempts to acquire land by agreement.</p> <p>Compulsory acquisition powers cannot be granted unless the Secretary of State is convinced that it is strictly necessary to compulsorily acquire Mr. Dickson's land and that there is a clear compelling public interest in doing so. The Guidance sets out the crux of the legal test: "Compulsory purchase is intended as a last resort".</p>	<p>The Land Interest misrepresents the test in this respect, which does not require alternatives to have been exhausted. Paragraph 8 of the Compulsory Acquisition (CA) Guidance (MHCLG, 2013) requires applicants to demonstrate that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored. The Applicant submits that it has done so and that the compelling case in the public interest is met.</p>
2.27.14	<p><i>Prest v Secretary of State for Wales</i> [1983] 1 WLUK 416 is firm authority for the following propositions:</p> <ul style="list-style-type: none"> • where the scales are evenly balanced — for or against compulsory acquisition — then the decision should come down against compulsory acquisition. • the deprivation of an interest in land against the citizens will is only lawful if the public interest decisively so demands. <p>• if there is any reasonable doubt on the matter, the balance must be resolved in favour of the citizen.</p>	<p>The Applicant's repeated attempts to engage in negotiations with the Land Interest can be found in the Landowner Engagement Report (Document reference: 4.6.6) and the Applicant continues to use all reasonable attempts to secure agreement to a cable route and avoid compulsory acquisition.</p>
2.27.15	<p>The judgment in <i>R. v Secretary of State for the Environment (1986)</i> 52 P. & C.R. 318 is authority for the following propositions:</p> <ul style="list-style-type: none"> • the decision maker may refuse to confirm an order or confirm associated powers if unsatisfied the applicant for powers has discharged its duty to demonstrate an alternative route is not a viable one. • the onus of establishing that a compulsory purchase order can be properly made must be on the acquiring authority. • it is its duty to lay before the decision maker the information necessary to convince it of necessity. If the promotor fails to do so the decision maker is fully entitled to say: "I refuse to confirm this order." 	<p>The Land Interest has proposed a number of alternative route options in its representations to the examination, which, for the reasons explained in its previous submissions Applicant's Response to Relevant Representations [REP1-017] (Table LI94.2), Applicant's Response to Affected Parties' Written Representations [REP2-028] and the Land Engagement Reports (Document Reference: 4.6.6) the Applicant has been unable to accept. However, following further engagement between the parties, and proposals of further iterations of the Land Interest's preferred option (Option 3 appended to [REP1-168]) the Applicant has in response proposed its own alternative of 'option 3' to the Land Interest for his consideration. This can be seen on the plan appended to the email to the Land Interest's agent on 06 June 2024 (see Appendix H). This option would require an amendment to the proposed DCO Order Limits but would involve less land to the north of the working construction corridor to mitigate perceived impacts upon the Land Interest.</p>
		<p>It should be noted though that the Applicant's proposal, as with the Land Interest's Option 3, has not been assessed given that it has arisen after the submission of the Application and at a late stage of the examination. In this respect, regard should be had to the guidance in paragraph 4.3.29 of EN-1 (Department for Energy Security and Net Zero (DESNZ), 2024) which advises that:</p>
		<p><i>"It is intended that potential alternatives to a proposed development should, wherever possible, be identified before an application is made to the Secretary of State (so as to allow appropriate consultation and the development of a suitable evidence base in relation to any alternatives which are particularly relevant). Therefore, where an alternative is first put forward by a third party after an application has been made, the Secretary of State may place the onus on the person proposing the alternative to provide the evidence for its suitability as such and the Secretary of State should not necessarily expect the applicant to have assessed it"</i>.</p>
		<p>The Applicant's proposal is therefore necessarily subject to:</p> <ol style="list-style-type: none"> 1) the Applicant conducting an assessment of the proposed route, which requires access to the Land Interest's land; 2) the consideration of the results of that assessment, and of any environmental, engineering or other effects that may be identified. In this regard there may be additional impacts on ecology, LVIA and arboriculture, which require further consideration and to be weighed in the overall balance alongside landowner impacts;

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- 3) consultation with the neighbour towards whose property the cable route is being requested be moved closer towards;
- 4) ,the determination of the appropriate means to consent the amendment to the routes in the event that the route is found to be acceptable; and
- 5) voluntary agreement to grant the necessary land rights to the Applicant for the amended route.

The Applicant's proposed alternative route was rejected by the Land Interest at a site visit on 13 June 2024, and subsequently confirmed in an email from his land agent dated 14 June 2024 (attached at **Appendix I**).

Having informed the Applicant that he had felled a section of the tree belt impacted by the cable route which the Applicant has previously identified as a constraint, the Land Interest's agent proposed a further new alternative cable route (in the email dated 14 June 2024) which the Applicant has since considered. This new proposal was broadly along the same cable route as that proposed by the Applicant on 14 June 2024, however also proposed 1) a reduction in the proposed DCO Order Limits of 40m, 2) utilisation of the woodland buffer and 3) further reduction of the proposed DCO Order Limits to exclude a gateway at the western end of the landholding.

This does not provide a sufficient area in which to construct the Proposed Development which would give rise to significant risk and therefore it could not be taken forward by the Applicant. The Applicant confirmed the parameters of the land required for the Proposed Development in an email response to the land agent dated 19 June 2024 (attached at **Appendix K**).

Discussions have since continued in relation to the onshore cable route proposed by the Applicant on 06 June 2024, which, subject to a number of specific requirements and caveats, it is understood might now be acceptable to the Land Interest. The Applicant is currently preparing a list of points for an agreed strategy for pursuing that proposal (see email from the Applicant dated 21 June 2024) and the Applicant hopes that this will result in an agreed way forward.

The Applicant has offered in its email dated 21 June 2024 to make appropriate (legal) commitments to work with Mr Dickson to use reasonable endeavours to facilitate the agreed change post-DCO Examination using a mechanism which allows for the proper consideration of the change.

The Applicant continues to regard compulsory acquisition as a last resort, as can clearly be seen by the continued engagement and attempts to reach agreement with the Land Interest.

Notwithstanding those negotiations, it has not been possible to conclude terms with the Land Interest, nor is there certainty as to the suitability of the route option under consideration and/or its ability to be consented. In the circumstances, the conclusion of a voluntary agreement with the land interest is not currently an alternative to compulsory acquisition, and compulsory acquisition powers are therefore necessary, without which the project could not proceed in a reasonable timescale, if at all.

Ref	Deadline 4 submission	Applicant's comments
		<p>If CA powers are not granted for the land at College Wood farm, there will be a material risk to the delivery of the project. The alternative route has not been assessed and if environmental impacts are significant and weigh against the consent of that variation, there is a risk that the Proposed Development is undeliverable. Nor is there a binding agreement from the Land Interest to grant the requisite land rights to the Applicant over the Order Land and/or the potential modified route.</p>
Outstanding Objections and Approach to Negotiations		
2.27.16	<p>The Guidance requires that acquiring authorities must provide substantial evidence of meaningful negotiation attempts. As detailed in Paragraph 19 of the Guidance, the Applicant is compelled to demonstrate that they have exerted reasonable efforts to secure all the land and rights in the Order through mutual agreement. Resorting to compulsory purchase should only be contemplated as an absolute last resort.</p>	<p>The Applicant's submissions to this Examination has provided detailed records of engagement and correspondence with Mr Dickson and his agents since 2020 as set out in the Land Engagement report (Document reference: 4.6.6). The following emails are attached at Appendices H – O:</p> <ul style="list-style-type: none"> • 28 May 24 – Email from the Applicant to Simon Mole • 30 May 24 – Email from the Applicant to Simon Mole • 06 June 24 – Email from the Applicant to Simon Mole • 10 June 24 – Email from the Applicant to Simon Mole • 13 June 24 – Email from the Applicant to Simon Mole • 14 June 24 – Email from the Applicant to Simon Mole • 19 June 24 – Email from the Applicant to Simon Mole • 21 June 24 – Email from the Applicant to Simon Mole
2.27.17	<p>The Guidance further states at paragraph 25:</p> <p><u>25. Applicants should seek to acquire land by negotiation wherever practicable. As a general rule, authority to acquire land compulsorily should only be sought as part of an order granting development consent if attempts to acquire by agreement fail.</u> <i>Where proposals would entail the compulsory acquisition of many separate plots of land (such as for long, linear schemes) it may not always be practicable to acquire by agreement each plot of land. Where this is the case it is reasonable to include provision authorising compulsory acquisition covering all the land required at the outset.</i></p>	<p>The Applicant submits that it has complied with Paragraph 25 of the Compulsory Acquisition (CA) Guidance 2013 by seeking to acquire land by negotiation wherever practicable. In accordance with that guidance, given the linear circa 38km onshore cable corridor, it was reasonable to include a provision in the draft Development Consent Order for compulsory acquisition at the outset. However, the Applicant has continued where practicable to engage with all affected parties since the submission of the Application and throughout the Examination, and it continues to regard compulsory acquisition as a last resort, as can clearly be seen by the continued engagement and attempts to reach agreement with the Land Interest which are explained above.</p> <p>Notwithstanding those negotiations, it has not been possible to conclude terms with all parties therefore compulsory acquisition powers are necessary to ensure that this NSIP can be delivered and that and its significant public benefits can be realised.</p>
2.27.18	<p>The Examining Authority has substantially heard submissions on the outstanding objections to the Order at the Compulsory Acquisition Hearing of Tuesday 21 May 2024. The purpose of this submission is not to repeat those. However, it is critical to highlight that, as far as we understand, the Applicant has only reached agreement 3 of the 156 affected parties as at the Deadline 3 submissions on 30th April 2024. It is self-evident there is an unusually high volume of both lack of progress with voluntary arrangements and remaining objections at this stage of the examination.</p>	<p>Please see the Applicant's response to ExQ2 (see Applicant's Responses to Examining Authority's Second Written Questions (ExQ2) (Document Reference: 8.81) LR 21. and 2.2 in this regard.</p>
2.27.19	<p>Mr Dickson has substantially addressed his experience with the Applicant's approach to negotiations in submissions. See [AoC-020] [REP1-168], [REP3-137], [REP3-1338]. However, the Examining Authority must place material weight to this factor as the Inspector</p>	<p>The Land Interest refers to the London Borough of Barking and Dagenham Council (Vicarage Field and Surrounding Land) Compulsory Purchase Order 2021, which was refused by an Inspector on 04 October 2022 (see Appendix P). The circumstances of that CPO are vastly</p>

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	<p>did the London Borough of Barking and Dagenham Council (Vicarage Field and surrounding land) Compulsory Purchase Order 2021. We will not extensively set out the decision but there are stark similarities between Vicarage and the current DCO before the Examining Authority which must be considered</p>	<p>different to the Proposed Development as it concerned the acquisition, relocation or extinguishment of businesses in an existing shopping centre.</p> <p>The reasons for refusing the CPO were many, including:</p>
<p>2.27.20</p>	<p>Broadly, the Inspector in Vicarage criticised the Applicant's approach as "ineffective" attempts to acquire the CPO land by agreement and for not keeping delays to a minimum. Therefore, the Inspector determined the compulsory acquisition of land as neither proportionate nor justified in the public interest.</p>	<ul style="list-style-type: none"> • The Inspector was not satisfied that the scheme was viable, particularly as the evidence that accompanied the planning application found the scheme to be 'substantially unviable'. This does not apply the Proposed Development, for which the Applicant has provided a comprehensive Funding Statement [REP4-009] which has not been challenged; • The Inspector was not satisfied that there was sufficient financial resources to compensate for business extinguishment. This does not apply to the Proposed Development. No businesses are to be extinguished and the Applicant's evidence in the Funding Statement on its ability to meet compensation liability is unchallenged; • No evidence as to need/future commercial occupation. This does not apply to the Proposed Development for which the needs case is fully grounded in National Policy; • A failure to negotiate in line with the Department for Levelling Up, Housing and Communities (DLUHC, 2019) CPO Guidance. The Applicant's land acquisition strategy has regard to both the Planning Act 2008 CA Guidance and the DLUHC Guidance. Further explanation is provided in the Applicant's Land Acquisition Strategy (Document Reference 8.92) submitted at Deadline 5; • Claims that financial offers were substandard. This does not apply to the Proposed Development. No land agent acting on behalf of a land interest has demonstrated that financial offers have not been market value. The Applicant's offers have reflected the freehold market value of the land, despite only new rights being sought, which is well in excess of the Compensation Code statutory basis of compensation. Enhanced offers have recently been made which go even further above the freehold market value of the land. • Extensive delays in progressing the scheme, with 3 years from the Cabinet resolution to make the CPO before it was actually made, increased the uncertainty for businesses. This does not apply to the Proposed Development, which has been progressed in a timely way, having regard to statutory consultation requirements. • Lack of information provision at the outset. This does not apply to the Proposed Development which has been subject to extensive consultation, both statutory and non-statutory. <p>The Applicant is not seeking to acquire land, save at the substations, nor will its acquisition require the relocation or extinguishment of businesses. There will be temporary impacts on land use but the Applicant has given binding commitments which are secured by the Draft Development Consent Order [REP4-004] to seek to minimise land acquisition and mitigate land impacts.</p> <p>It cannot reasonably be concluded that there are 'stark similarities' between the Vicarage Fields CPO and the Draft Development Consent Order [REP4-004].</p>

Ref	Deadline 4 submission	Applicant's comments
2.27.21	<p>The Applicant began engaging with landowners in 2020 but has secured, as far as we are aware, less than 2% of voluntary agreements. In Mr Dickson's case, he actively considered alternatives and submitted three viable options for the applicant to consider [REP1-168]. Moreover, Mr Dickson proactively engaged with the Applicant, suggesting alternatives and proposals during the consultation period [AoC-020] and long before the examination commenced</p>	<p>The Applicant does not agree that the options put forward are "viable". Indeed such options were concluded to likely result in unacceptable Environmental Impacts and were technically inappropriate as set out in reference 2.27.13 above. No evidence has been provided by Mr Dickson's advisors to support the Land Interest's claim that his 3 options are viable.</p>
2.27.22	<p>The Applicant dismissed all opportunities to consider and engage in meaningful negotiations with Mr Dickson and instead gave arbitrary reasons as they alternatives could not be delivered before reverting to their standard terms. As the Examining Authority has heard, this issue is not limited to Mr Dickson alone; there is a clear failure across the scheme by the Applicant to reach voluntary agreements, reflecting ineffective and woeful negotiations over the past four years. Even following the compulsory acquisition hearing of Tuesday 21st May no substantive progress has been made, including the Applicant neither accepting nor conducting a further site meeting.</p>	<p>This is strongly denied by the Applicant. The Applicant has provided a response to the position on negotiations in respect of the entire Order Land in response to ExQ2_(see Applicant's Responses to Examining Authority's Second Written Questions (ExQ2) (Document Reference: 8.81) LR 2.1 and 2.2 which it does not repeat here.</p> <p>The position with regards negotiations with the Land Interest is set out in the Land Engagement Report (Document Reference: 4.6.6). Contrary to the Land Interest's assertions, the Applicant has sought to make substantive progress since the CAH1, including by proposing counter-alternatives to the Land Interest's most recent proposals, to which agreement is awaited.</p>
2.27.23	<p>The Examining Authority must reflect and place material weight on the reason why so few agreements have been reached.</p>	<p>The Applicant strongly rejects the description of its reasons for not taking alternative options forward as being "arbitrary". By way of an example, the Land Interest's proposals would encroach into Ancient Woodland protection buffer area. Ancient Woodland '<i>takes hundreds of years to establish</i>' and is defined by the Government at paragraph 5.4.14 of National Policy Statement (NPS) EN1 (Department for Energy Security and Net Zero, 2024) as an '<i>irreplaceable habitat</i>'.</p> <p>Impacts on Ancient Woodland and tree loss are directly relevant to the determination of DCO Applications, with the paragraph 5.4.43 stating that:</p> <p><i>"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 and veteran trees unless there are wholly exceptional reasons."</i></p> <p>Progress with engagement has been hindered in part, not because of the Applicant failing to engage, but because the Land Interest was unhappy with the route and not accepting of the factors that are required to be taken into consideration, which has resulted in a number of inappropriate cable route and proposed methodologies which are unworkable for the Applicant. The claims of lack of progress are misleading. An explanation of the progress is set out in the Land Rights Tracker.</p>
Pattern of behaviour		
2.27.24	<p>In R v Brent London Borough Council, Ex p Gunning (1985) 84 LGR 168, Hodgson J. discussed the so called Sedley requirements which are:</p> <p><i>First ... consultation must be at a time when proposals are still at a formative stage. Secondly the proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response. Thirdly ... adequate time must be given for consideration and response and, finally, fourthly ... the product of consultation must be conscientiously taken into account in finalising any ... proposals.</i></p>	<p>The Land Interest has consulted extensively in accordance with the statutory requirements in the Planning Act 2008.</p> <p>Under Section 55 of the Planning Act 2008, the Planning Inspectorate is required to invite all relevant local authorities to make representations on adequacy of the Applicant's consultation and publicity arrangements. None of the Local Authorities considered that the Application had not been adequately consulted on, a position subsequently confirmed by the Planning Inspectorate in the Notification of Decision to Accept Application [PD-001]. The Planning</p>

Ref	Deadline 4 submission	Applicant's comments
2.27.25	The project before the Examining Authority remains in that process of finalisation.	Inspectorate was in receipt of a number of Pre-Acceptance representations from Land Interests (AoC-013 to AoC-021) in taking the decision to accept the application for examination.
2.27.26	Of all of the legal burdens of the Sedley requirements, the most relevant to this stage of the examination is meeting the threshold of discharging or demonstrating the taking into account of the representations of Mr Dickson "conscientiously" in respect of an alternative route across land in order to minimise the serious disruption to their lives and livelihoods.	The allegation that the Applicant has not properly consulted upon Affected Parties generally, or specifically with the Land Interest, is not substantiated and has absolutely no foundation.
2.27.27	A fair definition of conscientiously is conduct undertaken "in a thorough and responsible way". The Examining Authority is invited to conclude there has been no conscientious consultation whatsoever throughout the promotion of this project in respect of Mr Dickson's interest in land. See [AOC-020].	Furthermore, the Applicant has treated the Land Interest with respect at all times, and it vociferously disputes the allegations that it has acted otherwise. The Applicant strongly rejects false claims of the Applicant's disregard of those impacted.
2.27.28	Apposite descriptors for the Applicant's approach to the paramount legal considerations described in this submission are: dispassionate; dilatory; indifferent; insensible; unresponsive; heedless and careless.	The Applicant is not aware that the views expressed by the Land Interest in this representation are shared by the Land Interest's most recently instructed and still current land agent, with whom discussions have been and continue to be productive.
2.27.29	By the evidence of Mr Dickson (and many others) the Applicant has demonstrated that powers of compulsion would be exercised in a manner that is disorganised, blated, and unjust. This conduct reflects a lamentable disregard for those persons most acutely affected, not simply in terms of their proprietary interests but in any care or consideration for how the exercise of compulsory acquisition powers will have over the course of their lives over the next decade. There is no sensible basis upon which a decision maker considering the public interest can do other than reject the proposition that such coercive powers may be conferred upon such an irresponsible organisation.	
Request for modification of the order		
2.27.30	On consideration of Mr Dickson's evidence and position the Secretary of State cannot allow the development consent order to be granted without amendment. We therefore request Article 23 (3) of Part 5 Powers of Acquisition of the Draft Rampion 2 Offshore Wind Farm Order 20XX is amended as follows: (3) The power to compulsorily acquire land conferred under paragraph (1) does not apply to the Order land shown numbered [24/17, 25/2, 25/3, 25/4, 25/5], 34/29 and 34/30 on the land plans.	There is no justification for the amendment sought by the Land Interest. The compulsory acquisition powers sought over this land are required for the Proposed Development, without which the Proposed Development and its significant public benefits could not proceed. The Applicant has explored all reasonable alternatives which have been proposed by the Land Interest and which continue to be proposed, even at such a late stage in the examination notwithstanding the guidance in paragraph 4.3.29 of National Policy Statement (NPS) EN-1 (Department for Energy Security and Net Zero (DESNZ), 2024).
2.27.31	The only plausible alternative that would dispense with the necessity for an amended order would be the Examining Authorities' acceptance of a Change Application accommodating an alternative route proposed by Mr Dickson having regard to his farming practices and based on his previous consultation feedback to the Applicant. The acceptance of such application is however contingent on its presentation by the Applicant who, as this submission sets out, has not made any meaningful progress in securing a reasonable alternative. We are confident that any Change Application would not necessitate further consultation as any alternative proposal remains non-material and without affect to other parties and plainly would be agreeable to the relevant land interest.	As it stands, the Land Interest has not presented a 'final alternative route' to the Applicant, nor committed to be a binding agreement in relation to the same; nor submitted an assessment of its suitability; nor identified what it considers should be the subject of the Change Application referred to. Rather, the Land Interest has submitted multiple repeated options for alternative routes, and has also sought to alter the environmental baseline by felling trees which were identified by the Applicant as a constraint. This changing of requests and circumstances has made it difficult for the Applicant to establish what is the Land Interest's favoured solution and what are the factors which must be assessed. This materially hinders the ability to reach agreement.
2.27.32	The particulars of the final alternative route shall be duly submitted to the Examining Authority shortly. We respectfully urge the Examining Authority or Secretary of State, should	

Ref	Deadline 4 submission	Applicant's comments
	they possess the legal authority to impose this change in the course of reaching their decision, to exercise such authority.	In the circumstances, there is no alternative to compulsory acquisition which would provide the compelling benefits that the Proposed Development will deliver, and which ought to be preferred.
Conclusion		
2.27.33	Mr Dickson has expressed his willingness to reach a voluntary agreement with the Applicant throughout the process. However, the Applicant's conduct has made this impossible due to their failure to engage meaningfully and at any point prior to the submission of the DCO and commencement of the examination phase. The reasons provided in this submission show that the Secretary of State cannot demonstrate that compulsory acquisition powers are either necessary or nor constitute a compelling case in the public interest.	For the reasons given above this is denied.
2.27.34	Mr Dickson will separately be making an unreasonable costs application	There is no justifiable basis for a costs application and the Applicant fully reserves its ability to make detailed on the same should an application be made by the Land Interest.

Table 2-28 Applicant's comments to Tim Facer's Deadline 4 submissions

Ref	Deadline 4 submission	Applicant's comments
2.28.1	In March this year I requested from RWE a definitive plan showing the proposed route through my land at Cratemans Farm. The attached is the plan that they sent. It is blatantly obvious that the "overlay" has been placed in completely the wrong position. This is very concerning in view of the fact that this plan was sent by RWE, the very company that is proposing the construction and certainly does not instill confidence in their ability	The Applicant acknowledges the submission, and a corrected plan will be issued to the examination.

Table 2-29 Applicant's comments to Winckworth Serwood LLP on behalf of Susie Fischel's Deadline 4 submissions

Ref	Deadline 4 submission	Applicant's comments
2.29.1	<p>1.1. This is a written submission made on behalf of Susie and [REDACTED] Fischel (Fischels) in respect of: Post-hearing submissions, including written summary of oral case.</p> <p>1.2. The Fischels' solicitor, [REDACTED], appeared on behalf of the Fischels at the Compulsory Acquisition Hearing (CAH1) online on Friday 17 May and in person on Tuesday 21 May.</p> <p>1.3. This document first sets out the Fischels' summary of their oral case. Following the Fischels' CAH1 submissions, the Applicant responded on three points: alternatives, compulsory acquisition, and engagement. [REDACTED] on behalf of the Fischels briefly responded on these points and said a fuller response would be provided in Deadline 4 in writing.</p> <p>1.4. Paragraph 3 of this document (from page 12 onwards) therefore sets out these post-hearing submissions.</p>	Noted, the Applicant has no further comment on this matter at this time.
2.29.2	2.1. Sweethill Farm is subject to compulsory acquisition powers under the draft Development Consent Order (dDCO): the dDCO provides for the compulsory acquisition in relation to around 900m of the cable route (roughly 2% of the route) over Sweethill Farm, under Article 25 and Schedule 7 of the dDCO. This is shown on the Onshore Land Plans [PEPD-003] – sheet 26.	Noted, the Applicant has no further comment on this matter at this time.
2.29.3	<p>2. Summary of oral submissions made at CAH1</p> <p>2.1. Sweethill Farm is subject to compulsory acquisition powers under the draft Development Consent Order (dDCO): the dDCO provides for the compulsory acquisition in relation to around 900m of the cable route (roughly 2% of the route) over Sweethill Farm, under Article 25 and Schedule 7 of the dDCO. This is shown on the Onshore Land Plans [PEPD-003] – sheet 26.</p>	Noted, the Applicant has no further comment on this matter at this time.
2.29.4	2.2. The Fischels' concerns and the effects of the proposed powers on Sweethill Farm are set out in their Written Representation [REP1-163] and their Deadline 3 submission [REP3-132].	Noted, the Applicant has no further comment on this matter at this time.
2.29.5	2.3. [REDACTED] explained that she will be focusing her submission on two main issues: the extent of the land take – which links into what the Applicant said about whether the conditions under section 122 of the Planning Act are met – and the statements that the Applicant has made about engagement. Engagement is covered first because it has a bearing on the other issue of whether the requirements of section 122 are met.	Noted, the Applicant has no further comment on this matter at this time.
2.29.6	<p><i>Engagement Issues</i></p> <p>2.4. [REDACTED] referred to the Applicant's submission during the first session of the CAH that: "it continues to seek to reach voluntary agreement", and at which they stated both that "there are active and positive discussions with 60% of parties" and that "we are working across the board with interested parties to try and secure agreement. (emphasis added). These two statements do not seem to be consistent.</p>	There is no inconsistency here. It is correct that the Applicant has and continues to actively seek to contact all landowners to try to reach agreement, and good progress is being made with many of those landowners. However, a proportion of landowners have confirmed or strongly indicated that they do not wish to progress terms for a voluntary agreement. An update on the Applicant's land acquisition strategy, including enhanced offers which have been made, can be found at Land Acquisition Strategy (Document Reference: 8.92) .
2.29.7	2.5. The position put forward by the Applicant on Friday's hearing and in its documentation is very different to the reality experienced by the Fischels. It is acknowledged that it is fairly	The Applicant agrees that it is commonplace for the Applicant and Interested Parties to have different views about the engagement that has taken place, particularly those parties who have

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	<p>commonplace for the Applicant and Interested Parties on a DCO to have different views about what level of engagement is required. However, in this case the very wide difference in perspectives between the Applicant and landowners and the number of unresolved objections sets this DCO apart.</p>	<p>attended a Compulsory Acquisition Hearing which by its very nature means that agreement has yet to be successful. There are many factors however which influence the ability to secure agreement and the mere fact of objection and differing views does not mean that the Applicant has not sought to meaningfully engage. Each case should be considered on its merits.</p>
2.29.8	<p>2.6. Section 104(2) of the Planning Act 2008 states:</p> <p><i>“In deciding the application the Panel or Council must have regard to “any other matters which the Panel or Council thinks are both important and relevant to its decision”.</i></p>	<p>Noted, the Applicant has no further comment on this matter at this time.</p>
2.29.9	<p>2.7. Rather than running through all the dates of correspondence and the threatening tone of emails, as others have already done that, it was expressed that the Fischels' experience is very similar to that which others have experienced. The Land Rights tracker [REP3-011 – i.e. the Deadline 3 submission tracked change] is an example of how what the Examining Authority is being told by the Applicant does not reflect the whole picture.</p>	<p>This is an unsubstantiated assertion. The Land Interest has not been a party to the details of the engagement that has taken place between the Applicant and other Affected Parties. The Applicant strongly disagrees with the assertion that the tone of emails has been threatening. The Applicant does not understand why the Land Interest is alleging any such behaviour with regards to the conduct of engagement with them, but for the avoidance of doubt, if that is alleged, it is strenuously denied.</p> <p>The Applicant's communications with the Land Interest have been respectful, have accorded with guideline practice and process for progressing voluntary agreements, but has necessitated repeated attempts trying to engage the Land agent acting on behalf of the Fischels to provide feedback on the Heads of Terms.</p>
2.29.10	<p>2.8. The Land Tracker lists the engagement that is taking place. The Applicant is saying that it has had meetings with the Fischels, site visits and has sent them emails. That is true, but this does not itself mean that meaningful engagement is taking place. The tracker also lists the HoTs as “under discussion”.</p>	<p>A total of 10 site visits have taken place between 2021 and 2024 (to date). A requested meeting in June 2023 was turned by the land agent These have included meaningful discussions centred around the Fischel's dissatisfaction with the original route and the subsequent assessment of alternative routes. These discussions have resulting in conclusions regarding alternative route choices which have been communicated meaningfully via Letters dated 19 July 2022, 17 October 2023 and 5 July 2024. Whilst it has not been possible to adopt every suggestion and revision of the route put forward by the Fischels, that does not of itself mean that the Applicant has not given proper consideration to alternative options. The Applicant has engaged with the various requests put forward by the Fischels and made commitments where possible.</p> <p>Following the choice of the most suitable route, the Heads of Terms were sent to the Land Interest and their agent in March 2023. The draft Option and Deed of Grant precedent documents were sent to the Land Interest's agent on 24 October 2023. As at Deadline 4, there had been no written response on the Heads of Terms document. A response on the draft precedent option and lease documents was received via email from the land interest's agent on 1 July 2024. This took 9 months to be received, and until then, the Applicant had not received meaningful feedback from the land interest's agent on the Heads of Terms document, other than direct discussions with the landowner on the plan details (see below) and a brief and incomplete verbal consideration at a meeting on 3 April 2024) and this has been a 'blocker' to moving negotiations forward.</p> <p>Following a site meeting in April 2024, the Applicant has been engaging directly with the Land Interest via meetings on 20 June 2024 and 25 June 2024. Constructive discussions regarding the Heads of Terms plan, project information regarding hedgerow loss and key principles and commitments have taken place at those meetings. Subsequent to the meetings, a revised plan</p>

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		<p>and a proposed schedule of design and construction principles to be appended to the Heads of Terms further to requests made by the Land Interest has been forwarded to the land interest and their agent.</p> <p>The Applicant understands that the Fischels' wish to agree the plan and these principles before progressing to the legal stage (as per discussions at site visit meeting on 25 June 2024). Once these documents are agreed it is hoped that discussions can be progressed with the Land Interest and their agent regarding the key commercial terms, either ahead of, or alongside legal document progression. Please refer to the Fischels Land Engagement Report (LER) (Document Reference: 4.6.7) for the latest position relating to engagement and negotiations.</p> <p>The Applicant has received meaningful feedback on the Heads of Terms document from numerous agents acting for landowners across the route. However, no meaningful written response has been received from Robert Crawford-Clarke, the agent acting on behalf of the Land Interest, in over 16 months (as the Heads of Terms were sent on 16 March 2023), on the Heads of Terms specifically. This delayed and widespread lack of engagement by this particular agent (who acts for 7 landowners across the route) is not the fault of the Applicant. Similarly, the Applicant only received feedback from Robert Crawford-Clarke on 01 July 2024 in respect of the other clients he acts for on the draft Option and Easement documentation,</p> <p>The Applicant acknowledges that the Land Interest's agent raised a number of points verbally at the meeting on 03 April 2024, but declined to provide any further comment on the Heads of Terms until the plan of the Option area for the Heads of Terms is agreed. A revised Heads of Terms plan was sent on 5 July 2024 to the Land Interest and their agent which meets with the latest request to show an indicative 40m working corridor and the trenchless crossing compounds.</p>
2.29.11	<p>2.9. In this context, "under discussion" means:</p> <p>2.9.1. the Applicant has sent a version of the HoTs and template easement to the Fischels via their land agent.</p> <p>2.9.2. The Fischels' land agent asked in January if [REDACTED] could discuss those documents with the Applicant's solicitors.</p> <p>2.9.3. The Applicant's response was that if the Fischels wish to begin discussions with the Applicant's solicitors, the Fischels must agree the HoTs with the commercial terms and in the form supplied by the Applicant.</p>	<p>The Applicant first sent Heads of Terms to the Land Interest's agent in March 2023. The Applicant has requested feedback on numerous occasions on these Heads of Terms. In January 2024, a request was made by the Land Interest's agent for the Land Interest's solicitor to review the option and lease documents before any comments had been received in respect of the Heads of Terms. The Applicant explained in an email dated 30 January 2024, that it is worthwhile to have general consensus on high level points within the Heads of Terms before instructing solicitors as is standard practice in agreeing voluntary land documents.</p> <p>There are a number of steps missed out by the Land Interest's representations that leads to a misrepresentation of the course of events. As explained in references 2.2.7 and 2.2.8 above, and 2.1.2 within Deadline 4 Submission – 8.79 Applicant's Comments on Deadline 3 Submissions [REP4-070] a number of emails were sent to attempt to engage the land agent in discussions relating to commercial terms and project details and further discussions have taken place.</p>
2.29.12	<p>2.10. Those HoTs are on terms heavily stacked in the Applicant's favour and which a landowner cannot reasonably be required to accept, not least due to the unusually low level of compensation.</p>	<p>The Heads of Terms outline the Applicant's required rights to deliver the Proposed Development. The Applicant disagrees that the level of compensation is 'unusually low'. Whilst the Applicant has received some comments on the precedent template option and lease documents, the Applicant has never received specific feedback from the Land Interest's agent or a written list of queries or comments on the Heads of Terms.</p>

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2.29.13	2.11. While it is appreciated that compensation is not a matter for the Examining Authority, when it is being used as a tool to effectively say “agree this low level of compensation or we will not even begin to engage” that is a problem for the Examining Authority to consider.	<p>An initial offer for the permanent cable easement was made on 16 March 2023 based on a value of £15,000/acre and took into account an assumption that agricultural land in the vicinity of the Proposed Development may attract a freehold market value in the region of between £10,000 to £13,000/ac. (therefore, at a level aligned with open market land value), however no counter offer was received despite being invited in an attempt to elicit engagement. In June 2024, It should be noted that under the Compulsory Purchase Compensation Code, the statutory basis for the assessment of compensation for the acquisition of rights is pursuant to Section 7 of the Compulsory Purchase Act 1965, being compensation for severance and injurious affection based on the diminution in value of the land as a result of the acquisition of the rights.</p> <p>In private treaty discussions, when assessing the value of cable rights, a common approach is to adopt a 50% discount of the freehold value to produce a recognition payment. This 50% discount to freehold market value was not applied by the Applicant, who instead set its offers at a significantly more favourable level reflecting the unencumbered freehold value of the easement area, despite the fact that the land subject to the cable easement is not being acquired and can continue to be enjoyed post construction, including for agricultural farmland, amenity land and equestrian uses. These offers were entirely fair and reasonable, at a level both well in excess of the Compensation Code and typical payments for easements, and also in excess of the freehold market value of agricultural land.</p> <p>Mr and Mrs Fischel communicated their preference for agreeing the Heads of terms plan and some key design and construction principles for construction before negotiating the financial offer. For this reason an enhanced offer has not yet been made to Mr and Mrs Fischel. However, the Applicant has confirmed its intention to issue an enhanced offer upon request from the land interest.</p> <p>The Applicant previously communicated that it is willing to consider a counter offer, but has not yet received one. The Applicant's offer is at a figure in excess of the freehold market value of the land, notwithstanding the fact that it is only seeking powers for the compulsory acquisition of rights for an underground cable. This goes far beyond what would be paid under the Compensation Code, which would be based on the calculation of diminution in value of the land as a result of the acquisition of the new rights. The claim that the offer is an “unusually low” is unfounded and not in any way substantiated in evidence. The Applicant provides further detail on its approach to offers in its Land Acquisition Strategy (Document Reference: 8.92).</p> <p>Please see comments within reference 2.29.10 above. The claims that a “low level of compensation” is being used as a tool to leverage engagement are baseless and misleading. The Applicant notes that:</p> <ol style="list-style-type: none"> 1) The level of compensation offered is substantially above the freehold market value of the land, and significantly above statutory compensation code requirements. No evidence has been submitted by the Land Interest or any other Affected Party to substantiate the allegation that the Applicant's commercial offer is not fair. 2) Genuine engagement has been and continues to be held with the land interest to agree parameters around the use of the land required in an attempt to reach mutual acceptance. This engagement has taken place notwithstanding the lack of engagement by the Land Interest and their advising agent on the commercial terms. It is therefore

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		<p>wholly unfounded to allege that the Applicant requires agreement on the offer before it will engage on detailed matters, and not at all borne out in practice.</p> <p>Furthermore, the Applicant has offered an undertaking for legal fees and provided its solicitors details to progress the Heads of Terms and legal documentation, notwithstanding the lack of response on commercial terms.</p>
2.29.14	<p>2.12. At Deadline 3, when the latest version of the Land Rights Tracker was submitted, what “under discussion” meant is that the Applicant had sent the template documents, and that the Applicant will not discuss the terms of those documents unless the Fischels sign up to Heads of Terms in the form and with the level of compensation provided by the Applicant.</p>	<p>The Applicant disagrees with the assertion that ‘the Applicant will not discuss the terms of the documents unless the Fischels sign up to Heads of Terms in the form and with the level of compensation provided by the Applicant.’ As detailed within reference 2.29.10 above, the Applicant has requested a counter offer from the Land Interest’s agent but has not yet received one. Please also see comments relating to reference 2.29.11 above.</p>
2.29.15	<p>2.13. After the Fischels appeared at the Friday hearing to say they would raise the issue of engagement, the Applicant got in touch with the Fischels on Saturday, to say that they would be “willing to enter into discussions on voluntary documents once the commercial offer (i.e the cable payment) and plan” or (they offer this in the alternative) “that legal advice can be taken in connection with priority ‘legal’ areas of concern” in the HoTs but not the easement itself which, again, will seemingly only be taken forwards once the commercial offer is agreed.</p>	<p>It is standard practice to agree the key commercial and project requirements for the agreement prior to instructing legal advisors. This typically includes:</p> <ol style="list-style-type: none"> 1) A plan of the land required and any associated caveats and conditions. 2) Financial and other commercial or key practical points of agreement. <p>The email to the Fischels was an offer of a legal undertaking to enable them to take legal advice on any particular legal points of concern. The Applicant understands that the Fischels are not yet ready to move to the legal stage ahead of the plan being agreed (as discussed at the site visit meeting on 25 June). Notwithstanding, a full offer of a legal undertaking has been reiterated by the Applicant in its emails of 20 June 2024 and 28 June 2024 and a response is awaited from the Land Interest.</p> <p>At no point has the Applicant insisted on the commercial offer being agreed before progressing engagement on the remainder of the terms.</p>
2.29.16	<p>2.14. [REDACTED] expressed that this is not how a DCO is supposed to work. On the recent Lower Thames Crossing Order, the Examining Authority said that it is not up to affected parties to be pushed into accepting a low level of compensation as the hurdle to clear before the Applicant will enter into negotiations. If the Applicant cannot agree compensation, they must still try at all stages to reach agreement, and if compensation cannot be agreed, that can be left to be decided by the Lands Tribunal.</p>	<p>The Applicant cannot comment on what may or may not have been said in the examination of the Lower Thames Crossing Order or in what circumstances. This decision is awaited. Insofar as the Land Interest asserts that the Applicant is ‘pushing’ landowners into ‘accepting a low level of compensation as the hurdle to clear before the Applicant will enter into negotiations’, this is strongly denied for the reasons given above.</p>
2.29.17	<p>2.15. The Fischels have spent 4 years trying to reach an agreement with the Applicant. The Applicant is giving the panel one picture, but it is a picture that it is difficult for the Fischels to recognise.</p>	<p>The Applicant has been in contact with the Fischels since early 2021, initially with regards to informal consultation, undertaking surveys, and statutory consultation, including engagement on route selection and alignment.</p> <p>Heads of Terms, including a commercial offer, were issued in March 2023, 6 months prior to the submission of the Application. Since then the Applicant has chased on numerous occasions for specific land agent feedback on the Heads of Terms, but has not received any formal feedback on the Heads of Terms from the land agent at the time of writing this document, (aside from comments on the cable design and heads of terms plan) nor any commercial counter offer. This is contrast to other agents who have provided feedback on specific points within the Heads of Terms in either an excel or word document format.</p>

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2.29.18	2.16. The "Status Update" in the Lands Right tracker seems to offer a relatively positive picture of engagement: emails are being sent and meetings are being had, but they either contain little of substance or are going backwards: more than once the Fischels have been tentatively offered something on site or by email only to be told later by the Applicant that that change cannot be made.	This is denied for the reasons given above. It requires two parties to conclude agreement and whilst there is engagement over the option plan, the Applicant cannot make material progress on an agreement without details of the Land Interest's comments on Heads of Terms or on the commercial terms.
2.29.19	2.17. It was noted that Mr Lister/the Applicant mentioned on Friday that not all affected parties have shown a willingness to engage. The Fischels are very willing and wrote to the Applicant in November 2022 with their position on the proposed application. The Applicant responded to that 11 months later in October 2023, after the Application had gone in and when it was too late to change anything in the Application.	Please see the comments provided within reference 2.1.5 in Deadline 4 Submission – Applicant's Comments on Deadline 3 Submissions [REP4-070] .
2.29.20	2.18. Other than a brief introduction in the morning, [REDACTED] has not exchanged a single word with any of the Applicant's legal team despite having been involved in this since the end of last year. For now, the Fischels remain one of the 99 parties listed in the Land Rights tracker with whom an Agreement has not been completed.	The Applicant has provided details of its solicitors who are ready to progress the drafting of an option for an easement at the appropriate stage.
2.29.21	2.19. [REDACTED] explained that from the Fischels' point of view, meaningful engagement is not happening, and the reason she is having to appear and take up the panel's time is because she cannot get constructive or consistent engagement or be allowed to discuss terms with the Applicant's solicitor.	The Applicant has offered to provide a legal undertaking for solicitors' fees and it awaits a fee estimate from the Land Interest/their solicitor to enable this undertaking to be given
2.29.22	2.20. Compulsory acquisition is an option of last resort: the Applicant must have engaged constructively throughout all stages of the application. Under paragraph 30 of The Department for Communities and Local Government's Guidance on "Awards of costs: examinations of applications for development consent orders" (Costs Guidance) an Applicant that wishes to minimise risk of an award of costs should make sure there is "constructive co-operation and dialogue between the parties at all stages". This is not happening with the Fischels, and that picture is reflected among at least some other landowners.	The Applicant has engaged and continues to engage constructively with the land interest in an attempt to secure a voluntary agreement. Please see the Fischels Land Engagement Report (Document Reference: 4.6.7) for the latest position relating to engagement and progress. The Applicant does not accept that there are grounds for a cost order.
2.29.23	2.21. [REDACTED] requested that the Applicant enter discussions with the Fischels in relation to the HoTs and begins to negotiate the easement that it says it is willing to grant. It was recognised that resources may be stretched, as the Rampion 2 website states "the current consenting and development phase consists of a relatively small team", however the Applicant must ensure that they have the ability to deal with a DCO application and are willing to deploy the resources they have, without using compensation as a tool to block further engagement.	The text on the Rampion 2 website has no bearing on the negotiations between the Applicant and the Land Interest. Nor does the Land Interest make any attempt to particularise the implication that resources have affected the parties' negotiations.
2.29.24	<p><i>Section 122 of the Planning Act 2008 and Relevant Guidance</i></p> <p>2.22. [REDACTED] then addressed the extent of the land take and how that fits in with the Applicant's submissions at the first session of the CAH concerning section 122 of the Planning Act, related guidance, and how those tests are met.</p>	The rationale for the land required at Sweethill Farm was set out in response to Compulsory Acquisition Hearing 1 [REP4-074] (action point 14)
2.29.25	2.23. [REDACTED] explained that conditions for exercise of compulsory acquisition powers under the DCO are that land is required for the developments to which the consent relates and that there is a compelling case in the public interest.	The Applicant submits that the tests in section 122 of the Planning Act 2008 are met. With the exception of the land in the ancient woodland buffer, which the Applicant proposes to amend, all of the land over which rights are sought is required for the Proposed Development and the Land Interest has not led any evidence to justify the assertion that section 122 has not been satisfied.

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2.29.26	<p>2.24. The Applicant's submission that this test is met was disputed on the basis of the Department for Communities and Local Government "Guidance related to procedures for the compulsory acquisition of land under the Planning Act 2008" (CAH Guidance). [REDACTED] explained that the first requirement is that reasonable alternatives have been considered: Paragraph 8 of the CAH Guidance refers to reasonable alternatives. This states that: The applicant should be able to demonstrate to the satisfaction of the Secretary of State that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored.</p>	<p>Reasonable alternatives have been explored by the Applicant. This included the consideration of alternatives as part of the selection of landfall and grid connection locations; the consideration of and consultation upon a significant number of route corridor alternatives; engagement upon localised and detailed alignment alternatives as a result of landowner engagement; and extensive attempts to seek voluntary agreement as an alternative to compulsory acquisition. Further detail on the specific alternative modifications to the scheme considered with regards the Land Interest's landholding can be found within letters included at Appendix 17 and 18 within the Applicant's Responses to Relevant Representations [REP1-017]. However, it should be noted that the land interest does not currently accept the selected route alignment, and consequentially does not agree to the land rights required.</p> <p>The Applicant has also attempted to reach agreement by offering up in principle commitments to endeavour to meet the land interest's preferences in a voluntary agreement. These are set out below:</p> <ol style="list-style-type: none"> 1) The cable route construction corridor will be located as far to the south and east as practicable taking into consideration engineering and environmental requirements* 2) A buffer of 25m will be retained between the ancient woodland and the cable route construction corridor. This area is now proposed to be excluded from the DCO Order limits. This buffer will also be increased if detailed design work demonstrates it is feasible in line with commitment 5. 3) Ecological mitigation is likely to be required at "Pond 78" as identified in the Environmental Statement. The Applicant will consult with Mr and Mrs Fischel on those mitigation requirements prior to construction. 4) Tree and hedgerow loss will be minimised as far as possible taking into account engineering and project requirements 5) Rampion 2 will use reasonable endeavours to maximise distances between the cable corridor and the ancient woodland in the west and the pond to the north west corner of the land subject to engineering and project requirements. 6) Treeline removal at the construction access will be a maximum of 5m. 7) Rampion 2 will provide security measures to prevent unwanted third party access in a form to be agreed with the landowners.
2.29.27	<p>2.25. In this context, it is therefore worth considering whether all reasonable alternatives to compulsory acquisition have been explored. Firstly, one alternative to compulsory acquisition would be to try to reach agreement. The extent to which this had been explored by the Applicant has been addressed earlier in the submissions.</p>	<p>Please see above, which the Applicant does not repeat. Please also see Land Engagement Report (Document Reference: 4.6.7).</p>
2.29.28	<p>2.26. As far as modifications to the scheme are concerned, the Applicant has said that alternative options have been considered, but this is not the Fischels' experience. Early on during consultation, nearly 4 years ago, the Fischels asked the Applicant to move the cable corridor further south, to follow the line of Spithandle Lane more closely and, preferably, to carry on further east before turning north. This would have crossed the B2135 further south than is currently shown. This would have solved a number of issues:</p> <p>2.26.1. It would have minimised the severance of Sweethill Farm as the current proposed cable route will leave several severed areas of land towards the south and east of the fields adjoining Spithandle Lane and the B2135 respectively.</p>	<p>With respect to the crossing of the B2135 and the areas of flood risk, the Applicant notes that moving the cable further east and turning north would still result in crossing of the same constraints but with two trenchless crossings rather than one leading to additional costs and additional construction impacts including noise arising during the works and temporary impacts on the setting of a 2 Grade II listed buildings that are screened on the Applicant's selected route through existing roadside vegetation. The route identified by the Applicant avoids these additional impacts and there is no further evidence provided by the Fischel's to state why the route they promote is a suitable alternative when compared to the Applicant's selected route.</p>

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	<p>2.26.2. It would have also reduced the land required for access and for the cable route to turn northwards, avoided abutting the Ancient Woodland on Sweethill Farm and avoided the need for a trenchless crossing of the B2135 at an area which is prone to flooding with a confluence of tributaries feeding into the River Adur.</p>	<p>The Applicant notes that it has notified the ExA of the intent to make a non-material change to reduce the Order Limits adjacent to the Ancient Woodland at Sweethill Farm to be 25m or more from Lowerbarn Wood. The Applicant's conclusion remains that there will be no significant effects on Ancient Woodland.</p> <p>2.26.1 – Gated crossing points across the cable construction corridor to ensure access is maintained for land maintenance and other land use requirements.</p> <p>2.26.2 – The alternative route proposed by the Fischels would still have necessitated a trenchless crossing the B2135 and under the tributary feeding into the River Adur (slightly further to the east), albeit in two locations rather than one.</p>
2.29.29	<p>2.27. The disadvantage of this route is that it would have required the Applicant to engage with several more landowners due to smaller landholdings on the eastern side of the B2135.</p>	<p>There are a number of disadvantages with this route, as opposed to the current route within the proposed DCO Order Limits. These are summarised within the Letters included at Appendix 17 and 18 within the Applicant's Responses to Relevant Representations [REP1-017]. In addition, an assessment of 'Option D' which was put forward at the site visit with the Land Interest in April 2024, has been provided via email on 07 June 2024 and via a Formal Letter on 05 July 2024. There are a number of disadvantages, including additional trenchless crossings, and greater impacts on land uses. As highlighted at CAH1 (May 2024), it is noted that these smaller landholdings are arranged as paddocks and actively used for equestrian grazing. It is entirely appropriate for the Applicant, as part of its consideration of reasonable alternative options, to wish to avoid having potentially significant impacts upon multiple additional landholdings which are known to be in active use. The Land Interest has not provided any information to the Examining Authority to justify why Option D should be preferred.</p>
2.29.30	<p>2.28. The Fischels have been told that the alternative that they proposed was not suitable, and that the DCO route is better, but it is not clear why. The Applicant has provided nothing to show that it has explored the alternative proposed by the Fischels in the letter of November 2022, an alternative that is not just reasonable but is also less harmful than the DCO route in (as far as we can tell) almost every way but one.</p>	<p>The alternative route proposed by the Fischels was assessed and rejected. The reasoning behind this is summarised within the Letters at Appendix 17 and 18 within the Applicant's Responses to Relevant Representations [REP1-017]. The Land Interest adduces no material to substantiate the assertion that this route is less harmful than the proposed DCO Order Limits.</p> <p>At a site meeting on 03 April 2024, an alternative route was proposed by the Fischels, which is a variation of Option A, known as Option D. The reasoning for rejection of Option D has been summarised in various documentation but is detailed again below for ease of reference.</p> <ul style="list-style-type: none"> • Engineering technical, logistics and economics: An additional trenchless crossing under a B2135, watercourse, vegetation and area at risk of surface water flooding. <p>Land Interest: Furthermore, the route would involve the trenchless crossing exiting into paddock land and therefore land use impacts on adjacent equestrian landowners would be greater. There would also be common land required to be trenched under.</p>
2.29.31	<p>2.29. To meet the first limb of the test itself in section 122, the Applicant must show that the land is required for the development to which the development consent relates. The CAH Guidance states at paragraph 11 that for that test to be met, the Secretary of State will need to be satisfied that the land to be acquired is no more than is reasonably required for the purposes of the development.</p> <p>2.30. At Friday's CAH, the Applicant explained their justification for the land take. The Applicant's Statement of Reasons explains its approach to exercise of its compulsory</p>	<p>Please see responses to references 2.29.22 and 2.29.23 above.</p>

Ref	Deadline 4 submission	Applicant's comments
	<p>acquisition powers (the most recent version of which appears to be the version the Applicant submitted in August 2023, [APP-021]):</p> <p>2.30.1. At paragraph 9.11.8 of the SoR the Applicant submitted in August 2023, [APP-021], the Applicant states <i>“it is currently envisaged that construction works (which will generally require a working corridor of 40m but may require a wider working corridor at crossing points, [e.g. for] trenchless installation)”</i>.</p> <p>2.30.2. Paragraph 9.11.9 then states <i>“The typical corridor over which the permanent rights and the restrictive covenant will be sought is likely to be 20m, but this may vary according to local conditions. A maximum value of 25m (excluding HDD crossing locations) has been assessed as a reasonable worst case scenario.”</i></p>	
2.29.32	<p>2.31. Despite this suggestion that 40m is expected to be needed, sheet 26 of the Onshore Land Plans [APP-007] shows a cable corridor of approximately 70m across Sweethill Farm – as the Examining Authority saw for themselves at the Site Inspection. That is, as has been demonstrated, considerably more flexibility than is required at other sites along the route. It is not clear why the red line boundary is approximately 70m for Sweethill Farm, and why the usual 40m is not sufficient on this site. There is not a trenchless crossing across the whole site.</p>	<p>Please see Applicant's response to reference 2.29.22 above. A restriction to a location specific fixed 40m corridor prior to site surveys and detailed design would not allow any flexibility for the construction to adapt to any of the following:</p> <ul style="list-style-type: none"> - Obstacles identified during site investigation and surveys which would need to be avoided - Potential archaeological features which need to be avoided - New ecological features to be avoided or bespoke environmental mitigation - Drainage requirements wider than 40m - Ground conditions require an area to be avoided <p>The Applicant needs the area requested to reduce the risk of encountering constraints and being unable to construct, he inability for the Applicant to meet Project commitments listed in the Commitments Register [REP4-057] associated with the above would at best frustrate the delivery of the Proposed Development and at worst, should the Applicant discover a constraint that could impact on Proposed Development delivery, financial investment or contracts may be put at risk resulting ultimately lead to delayed or thwarted renewable energy provision.</p>
2.29.33	<p>2.32. In its first written questions, the Examining Authority asked the Applicant to provide justification of each section where the 40m cable corridor is exceeded (LR1.9). The question was also asked again last Friday. It still does not seem that the Applicant can give any more specific explanation for this site other than the response it gave in response to those questions at [REP3-010], i.e. that flexibility is required at this stage, and more detail about specific cable route will be identified during specific site investigations.</p>	<p>Please see response to 2.22 above and full answers to Applicant's Response to Actions Points Arising from Issue Specific Hearing 2 and Compulsory Acquisition Hearing 1 [REP4-074] (action point 14) which specifically detail the requirements at Sweethill Farm. With the exception of the land within the ancient woodland buffer, the Land Interest does not identify any part of the Order Land which they consider is not required by the Applicant but simply asserts that it is too wide with no substantiation of the same. In contrast, the Applicant has provided a detailed explanation of the engineering and environmental constraints which necessitate the flexibility sought.</p>
2.29.34	<p>2.33. Detailed design comes later, and some flexibility is required. However, the Applicant has not undertaken a sufficient level of design work: for Examining Authority, the location where the Applicant has proposed trenchless crossing TC21 [as shown for Examining Authority in REP3- 024 – Outline Code of Construction Practice] – is right on top of a hillock, and in the one location that is not flat. It is also right next to a pond. When engineers for the Applicant visited Sweethill Farm, some years ago, the engineer expressed surprise at the location proposed for the trenchless crossing. As soon as detailed site investigations are undertaken it seems likely that the Applicant will understand it is not a workable location for a trenchless crossing.</p>	<p>The Applicant notes the concern of the LI around the topography and presence of a pond nearby but this is not based upon any engineering rationale The Applicant points out that the limits of deviation for the entry pit of the trenchless crossing extend across the width of the Red Line Boundary in this location, providing sufficient flexibility. The Applicant remains confident these can be appropriately managed during detailed design of the trenchless crossing. The Applicant refers to the approach to drainage requirements set out in the Outline Code of Construction Practice [REP4-043] Section 5.10 and specifically to Commitment C-28 and C-73 of the Commitments Register [REP4-057] as secured through Requirement 22 in the Draft Development Consent Order [REP4-004]. Mitigation measures may be required if</p>

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	<p>2.34. [REDACTED] noted appreciation for the panel's suggestion earlier of making amendment to Article 25 and preferably Article 7 of relinquishing powers over the remaining land once further detailed design has been carried out. It was explained that this should be on the face of the Order and while that would go some way to help, this does not resolve the fundamental issues of more land being taken than is required at this stage.</p>	<p>Great Crested Newt are identified in the pond prior to construction, however the slope on the land which is a more accurate description than a "hillock" is not considered to be problematic for construction as is suggested by the Land Interest's representative.</p>
2.29.35	<p><i>Severance</i> 2.35. [REDACTED] explained that not only is the area wider than is needed, the Applicant's compulsory acquisition powers needlessly severs the Fischels' land and leaves severed slivers of the field at both the southern and eastern sides. That approach is not consistent with the Applicant's commitment in C-67 of the Commitments Register [APP-254], which indicates that the onshore cable route is likely to be routed to closely follow the line of existing field boundaries as far as is practicable. With the current red line boundary where it is, the Applicant can place the cable right up against the Ancient Woodland. It must be practicable to go closer to the field boundary than that.</p>	<p>The Applicant refers to the response given at point 3.4 in Deadline 2 Submission – 8.51 Category 8: Examination Documents – Applicant's Response to Affected Parties' Written Representations [REP2-028].</p>
2.29.36	<p><i>Buffer for the Ancient Woodland</i> 2.36. On the subject of ancient woodland, [REDACTED] referred to Chapter 22 of the Environmental Statement at paragraph 22.9.55 [APP-063], which states that: "all ground works will be restricted to areas in excess of 25m from the edge of Ancient Woodland." This commitment is reflected in the Commitments Register at C-216: "All ancient woodland will be retained with a stand-off of a minimum of 25m from any surface construction works."</p>	<p>Noted and agreed.</p>
2.29.37	<p>2.37. The draft DCO provides for works to be carried right up to the boundary of Lowerbarn Wood, an Ancient Woodland on Sweethill Farm: there is no gap between the red line boundary and the edge of Lowerbarn Wood (Sheet 26 - [APP-007]). The red line boundary also passes very close to the north-eastern corner of Lowerbarn Wood.</p>	<p>The Applicant is proposing a change request to remove this land from the Order Limits and is not proposing works within 25 m of the ancient woodland buffer of 25 m. Commitment C-216 restricts the level of works in any event.</p>
2.29.38	<p>2.38. Section 122(2) of the Planning Act 2008 requires the Secretary of State to be satisfied that the area subject to compulsory acquisition is no more than is reasonably required for the purposes of the development, before they can authorise compulsory acquisition under the dDCO. The Secretary of State cannot be satisfied that the area within the red line boundary on Sweethill Farm is no more than is reasonably required, because the Applicant itself says that even at this stage not all of that area is required and that a 25 metre buffer should be provided for in relation to any Ancient Woodland. The red line boundary should not be as close to that area of the woodland, and we do not believe that compulsory acquisition that close to the woodland can be justified.</p>	<p>Please note the Applicant's proposed change request in relation to this matter which the Applicant trusts will address this aspect of the Land Interest's objection.</p>
2.29.39	<p>2.39. [REDACTED] noted that the Applicant may argue that this site is a particularly difficult one and so needs more land take. If this is the case, then why did the Applicant not pursue the alternative suggested by the Fischels and turn northwards to the east of the B2135 instead of over the Fischels' land?</p>	<p>The Applicant has taken the most suitable route toward DCO submission. Please see references 2.29.27 and 2.29.28 for further information.</p> <p>The Applicant notes that the suggested alternative crosses the same constraints in the B2135 and the tributary of the River Adur and associated area of flood risk. The Fischel's proposals includes using two trenchless crossings instead of the proposed single crossing leading to additional costs and potential construction impacts arising including noise and vibration.</p>
2.29.40	<p>2.40. The Applicant has made the statement – both its response to the Examining Authority's 1st Written Questions and on Friday that:</p>	<p>Noted and agreed.</p>

Ref	Deadline 4 submission	Applicant's comments
2.29.41	<p><i>"All of the land subject to compulsory acquisition powers is necessary to construct, operate, protect and maintain the scheme and the extent of land within the Order Land is proportionate and is no more than is reasonably necessary."</i></p> <p>2.41. The Applicant has not sufficiently considered alternatives, and they are compensating for a lack of site investigation and poor route choice by maximising the area over which they propose to exercise compulsory acquisition powers. This limb of the test in section 122 is not met: the Applicant cannot demonstrate that all the land for which compulsory acquisition powers are sought in the DCO in relation to Sweethill Farm is required.</p>	<p>The Land Interest may not be happy with the outcome of the Applicant's consideration of the alternatives proposed by the Land Interest, but it cannot be rationally concluded that the Applicant has failed to give sufficient consideration to those alternatives. That includes Option D, despite it only being proposed by the Land Interest for the first time circa 3 months into the examination. Nor can it be reasonably concluded that the Applicant has failed to provide clear reasons for not taking alternatives forward. The Applicant's reasons for refusal of the Land Interest's alternatives have not been challenged in any meaningful way other than by mere assertion.</p> <p>Paragraph 8 of the CA Guidance 2013 (Ministry of Housing, Communities and Local Government (MHCLG), 2013) requires applicants to demonstrate that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored. The Applicant submits that it has done so and that the compelling case in the public interest is met.</p> <p>The Applicant's response to Applicant's Response to Actions Points Arising from Issue Specific Hearing 2 and Compulsory Acquisition Hearing 1 [REP4-074] states that specific reasons for required design flexibility over the Fischel's Land relate to:</p> <ul style="list-style-type: none"> • 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 [PEPD-033] (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. <p>The Applicant's engineering team have reviewed the plans and propose to make a change to exclude the land within the ancient woodland buffer from the DCO. However this review has also included the wider land holding at Sweethill Farm and the conclusion is that the remainder of the land is required for the Proposed Development.</p>

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2.29.42	2.42. In addition to establishing the purpose for which compulsory acquisition is sought, section 122 requires the Secretary of State to be satisfied that there is a compelling case in the public interest for the land to be acquired compulsorily. As [REDACTED] (counsel for Wiston Estate) had explained this test, it was not repeated.	Noted, as explained above, the Applicant submits this test is met.
2.29.43	2.43. The Applicant has not demonstrated that all of the land within Sweethill farm is necessary for the purposes of the Scheme, and there are clearly less harmful alternatives which the Fischels have proposed – which take less land, avoid ancient woodland, avoid flooding issues –and the Applicant has failed to give adequate reasons why it has dismissed them. 2.44. [REDACTED] referred to the Applicant's earlier submission that: <i>"It is appropriate to include CA powers where it is not practicable to acquire land by agreement."</i>	The Applicant does not agree with the Land Interest. No evidence has been provided by the Land Interest to substantiate the claims made. The Proposed Development would not impact adversely on ancient woodland, nor does it give rise to 'flooding issues'. The Land Interest has not demonstrated that there would be less land required and the Applicant does not accept this. The Applicant responded to the Land Interest with the reasons for not progressing Option D on 07 June 2024 and provided a fuller response on 05 July 2024 setting out the reasons for not progressing as set out in reference 2.29.28 above.
2.29.44	2.45. The "not practicable" comment is important here - that is reserved for matters where consistent and constructive engagement throughout the process has been unfruitful. This does not apply here. The Applicant has not engaged with this process in a meaningful way and its approach to negotiation is "accept this low level of commercial compensation or we will not discuss an agreement".	This is denied for the reasons given above. Further detail on the Applicant's engagement with the Land Interest can be found in the Land Engagement Report (Document Reference: 4.6.7) and reference 2.29.24 above. Unfortunately, this has not resulted in acceptance of the either the Proposed Development or key commercial terms to date but the Applicant continues to seek to make progress.
2.29.45	2.46. It is not appropriate to include compulsory acquisition powers, because no meaningful attempt has been made to acquire land by agreement. There is no compelling case in the public interest.	<p>The Applicant disagrees with the allegation that 'no meaningful attempt has been made to acquire land by agreement'. Please see references 2.2.7, 2.2.8, 2.2.13 and 2.2.14 (above), and further information within Table 2-30 of 8.79 Applicant's Comments on Deadline 3 Submissions [REP4-070].</p> <p>The Applicant submits that it has complied with Paragraph 25 of the Compulsory Acquisition (CA) Guidance 2013 (MHCLG, 2013) by seeking to acquire land by negotiation wherever practicable. In accordance with that guidance, given the circa 38km linear onshore cable corridor, it was reasonable to include a provision in the Draft Development Consent Order for compulsory acquisition at the outset. However, the Applicant has continued where practicable to engage with all affected parties since the submission of the DCO Application and throughout the Examination, and it continues to regard compulsory acquisition as a last resort.</p> <p>Notwithstanding those negotiations, it has not been possible to conclude terms with all parties therefore compulsory acquisition powers are necessary to ensure that this Nationally Significant Infrastructure Project (NSIP) can be delivered and that and its significant public benefits can be realised.</p>
2.29.46	2.47. The Panel's attention was drawn to the following passage in the CAH Guidance (at paragraph 16): <i>"There may be circumstances where the Secretary of State could reasonably justify granting development consent for a project but decide against including in an order the provisions authorising the compulsory acquisition of the land".</i>	Noted, but the Applicant submits that this is not one of those circumstances. The examples given in paragraph 16 of the Compulsory Acquisition (CA) Guidance (MHCLG, 2013) include a failure to substantiate that all of the Order Land is necessary for the scheme, or where the scheme is modified in a way which affects the need for land acquisition. With the exception of the ancient woodland buffer, which the Applicant proposes to exclude from the Order Land, all of the land belonging to the Land Interest over which compulsory acquisition is sought is required for the Proposed Development.

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2.29.47	2.48. [REDACTED] explained that this is clearly a circumstance in which it is open to the Secretary of State to decide to remove all or some of the proposed compulsory acquisition provisions from the DCO.	This is denied for the reasons given above.
2.29.48	<p>2.49. The Fischels' request to the Applicant is as follows:</p> <p>a) to provide a clear, legally binding commitment from the Applicant to narrow the cable corridor and to place it as far to the South and East of their land, so that it hugs the existing field boundary, minimises severance, and goes no closer to the Ancient Woodland on their farm than is necessary.</p> <p>b) Secondly, that the Applicant engages with the Fischels' advisers so as to give that commitment in the form of legal agreement, without compensation having to be agreed first. The engagement will need to involve land agents and lawyers from both sides, because professional advice will be required to ensure a binding agreement is reached, and it should include an undertaking from the Applicant to pay the Fischels' legal and land agent fees.</p>	<p>The Applicant has already committed to closely follow the line of existing field boundaries as far as is practicable in commitment in C-67 of the Commitments Register [REP4-057]. In addition, the Applicant has offered the following commitment to Mr and Mrs Fischel specific to their landholding:</p> <p><i>"to locate the cable as far south as practicable taking into environmental and engineering requirements."</i></p> <p>This is not the same as a commitment to "hug the existing field boundary" because that cannot be achieved due to technical engineering requirements taking into account the multiple trenchless crossing requirements and cable 'bend' in this location. However the offered commitment provides further detail on how the Applicant will comply with commitment C-67 in relation to this land holding. If terms can be agreed, this commitment can be included in the voluntary agreement. If terms cannot be agreed, the Applicant is willing to give the commitment in a legal undertaking and has emailed the Land Interest to request contact details for agreement of an appropriate undertaking (emails of 20 June 2024 and 28 June 2024). The Applicant will pay the Land Interest's reasonably and properly incurred legal fees in connection with considering that legal undertaking.</p>
2.29.49	2.50. From the Examining Authority, the Fischels would ask that it monitors closely the extent to which further engagement is constructive and productive and that, if agreements are not reached, that it considers whether it would be appropriate to recommend the removal of any of the compulsory acquisition powers from the DCO.	The Applicant submits that the tests in section 122 of the Planning Act 2008 and the Compulsory Acquisition (CA) Guidance (MHCLG, 2013) are met, and that there is a compelling case in the public interest for the authorisation of compulsory acquisition powers.
2.29.50	<p>3. Post-hearing submissions</p> <p>3.1. The Applicant responded to the Fischels' submissions at CAH1. Given the length of the Applicant's response and the remaining time available for the day's hearing, [REDACTED] responded only to the key points and committed to providing a fuller response in writing at Deadline 4, provided here. The Applicant's response was categorised into three parts: alternatives, compulsory acquisition, and engagement.</p> <p>3.2. Unfortunately, the Applicant's response did not provide the Fischels with any assurance that (a) engagement will improve or (b) that the land taken over Sweethill Farm is no more than reasonably necessary, and that the Ancient Woodland on the Farm will be afforded sufficient protection. Rather, the Applicant continued to rehearse the same response that it has throughout the examination, and continued to fail to provide sufficient detail or respond to the specific points raised.</p> <p>3.3. To that end, the Fischels stand by their position set out in earlier submissions and during the CAH1, as set out above. The Fischels do wish to respond to the following specific points made by the Applicant in response:</p>	<p>Please refer to the Land Engagement Report (Document Reference: 4.6.7).</p> <p>The rationale for the proposed DCO Order Limits has been provided by the Applicant in the response to CA Hearing 1 actions (see Applicant's Response to Actions Points Arising from Issue Specific Hearing 2 and Compulsory Acquisition Hearing 1 [REP4-074]) as set out above in the response above to reference 2.29.22.</p> <p>The Applicant has had detailed discussions with the Land Interest since Compulsory Acquisition Hearing 1 (CAH1) (May 2024). An initial and then fuller response has been provided on the landowner's proposed "Option D" as outlined in reference 2.29.28 above. Further to the discussions at site meetings with the Land Interest in June, a list of design and construction principles the Applicant is prepared to commit to has been prepared and sent to the land interest and their agent. The Applicant has confirmed that it will issue a legally binding undertaking to the Land Interest in relation to the updated list of 'key (design/ construction) principles' referred to at paragraph 2.29.24 above. It first awaits the Land Interest's feedback on those principles. The Applicant is willing to give those commitments regardless of whether the parties are able to agree Key Terms by the end of the Examination.</p> <p>The Applicant has reviewed the works proposed within 25m of the ancient woodland. The Applicant's proposed change request in relation to amending the proposed DCO Order Limits</p>

Ref	Deadline 4 submission	Applicant's comments
2.29.51	<p>3.3.1. In seeking to justify why the cable corridor goes so closely to the Ancient Woodland, the Applicant stated that there might be other activities in the construction of the onshore cable route of which the Applicant has no detail on as to why that might be immediately required; the Applicant simply cannot threaten to endanger Ancient Woodland because it hasn't done a sufficient enough assessment at this stage – that is not a justification for ignoring the 25 metre buffer that is otherwise required.</p>	<p>to exclude all areas within 25m of ancient woodland will ensure that there is no risk of harm to ancient woodland.</p> <p>Please refer to the Applicant's proposed change request. There will be no adverse impacts on ancient woodland as a result of the Proposed Development.</p>
2.29.52	<p>3.3.2. The same response goes for the Applicant's comment that reducing the wider order limits could impede the implementation of optimal construction design; land owners should not face the risk of losing their land/having their land severed because the Applicant has not yet had sufficient assessments done. The test in section 122 that the land subject to compulsory acquisition powers is "no more than is reasonably necessary" – which requires exactly those types of assessments to have been carried out before someone's land is compulsorily acquired.</p>	<p>As explained in Applicant's Response to Actions Points Arising from Issue Specific Hearing 2 and Compulsory Acquisition Hearing 1 [REP4-074] (agenda item 2), temporary possession will only be taken of land required to deliver the project. The principle of 1) applying for a wider DCO corridor and 2) narrowing down to a working construction corridor within which the permanent easement will be located is well established for linear infrastructure projects. It is disproportionate to expect full GI/ SI campaign and detailed cable design at a substantial cost without consent. Further detailed design is typically carried out with full involvement of the cable installation contractor which is not possible at this stage of the Proposed Development. The approach taken by the Applicant is not a unique or individual approach to the project but an industry wide approach which has been followed on other similar infrastructure projects such as Triton Knoll and Awel y Mor wind farms. The Applicant's response to Action Points Arising from Compulsory Acquisition Hearing 1 sets out more detail on the appropriate stage for site surveys and also explains that the Secretary of State has been satisfied with the degree of flexibility and level of design reached in equivalent DCO applications. The DCO for the Proposed Development is consistent with those other schemes.</p>
2.29.53	<p>3.3.3. In relation to engagement, the Applicant stated that it has put forward a suitable cable route to alleviate the Fischels concerns; it is not clear which route is referred to here. As will be clear to the Examining Authority, the Fischels concerns are far from alleviated. We describe at paragraph 2.17 how it took the Applicant 11 months to respond to the Fischels' letter concerning the route, and that the Applicant's response came after the application had been made, limiting opportunities for the Fischels to input into the route alignment. The Applicant stated at CAH1 that engagement has stepped up since it made the application: it is correct that meetings and emails have been more frequent than before the application was made, but we note to the Examining Authority that the parties are still a long way from agreeing any legal commitment. Given the Applicant's response at CAH1, it is worth setting out for the record an outline of the engagement that has occurred with the Applicant since the beginning of April 2024 in relation to the plans that the Applicant has provided the Fischels with (noting that the April communication was also included in the Fischels' Deadline 3 submission [REP3-132]):</p> <p>a) 3 April 2024: the Fischels met with a representative of the Applicant and an agent for the Applicant on Sweethill Farm, where they had the opportunity to show the Applicant and the agent the areas of concern. At the site visit, the agent showed the Fischels a revised "work in progress" indicative route of</p>	<p>The details of the route to which the Applicant refers are provided in Table 2-30 of the Applicant's Comments on Deadline 3 Submissions [REP4-070] and reference 2.1.2 in particular highlights the following:</p> <ul style="list-style-type: none"> - A Letter from received form the Fischel's agent dated 25 January 2022 commenting that <i>'this variation is an improvement on the original cable route'</i>. - A Letter received from the Fischel's agent dated 11 April 2022 which stated <i>'my clients acknowledge that this variation is an improvement on the original cable route.'</i> - A Letter received from the Fischel's agent dated 21 September 2022 which stated <i>'we acknowledge that your revised route is an improvement on your original proposal'</i>. - Formal Consultation response received dated 28 November 2022 which stated <i>'the proposed revised route is clearly preferable to the original route' as well as raising other concerns'</i>. <p>The Applicant acknowledges there was a delay in sending the letter (dated 17 October 2023), which summarised detailed reasoning for the rejection of Option A and the choice of Option B. The Applicant offered an engagement meeting to the Land Interest in June 2023 at their property to discuss matters within their consultation response, however this was rejected by their agent. In addition, the 2023 letter was sent subsequently to a letter dated 19 July 2022</p>

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	<p>where the cable route could be moved to. This was presented to the Fischels as an “indicative work in progress” plan; the Fischels made clear that they would require the plan to be legally binding before it could go any way towards addressing their concerns – and they thought the agent for the Applicant understood that position.</p> <p>b) 22 April 2024: the Applicant emailed the Fischels and stated that the plan that was presented at the site visit was indicative only, and the corridor [on the plan the Fischels were shown at the site visit] “is highly likely to change” and does not represent the Applicant’s preferred route.</p> <p>c) 2 May 2024: the agent for the Applicant emailed the Fischels a marked-up plan that marked the alternative route that is a variation of “Option A” (the orange route on the plan that had already been assessed). The agent for the Applicant asked the Fischels to confirm whether the green line which she had added for illustration correctly represented the more southerly exit across the B2135 which was discussed at the site visit on 3 April 2024 (i.e. the plan that the Applicant had stated it would provide a month earlier).</p> <p>d) 8 May 2024: the Applicant emailed the Fischels with another, different plan, and noting that they had not had a response to the plan provided shortly before the bank holiday weekend a matter of days before. It was not clear how this plan was any different to the most recent plan that the Applicant had filed in the examination.</p> <p>e) 10 May 2024: the Fischels asked the Applicant to clarify the differences between the 2nd and 8th May plans.</p> <p>f) 12 May 2024: The Applicant emailed the Fischels and clarified that the only difference to the plan provided by email on 8 May 2024 was a text box that had been added to the plan stating “Cable sited as far south as practicable within DCO red line subject to environmental and engineering requirements”. We note that an inset describing a cable location on a draft plan is not a commitment. This should be contrasted with what the Applicant stated at CAH1, namely that that “we are staying to the right hand side with the redline boundary to give us the flexibility in this corridor, to also maintain the required standoff to the ancient woodland as per commitment C-216 as well.” It could well be the Applicant’s intent to stick to the right hand boundary, in which case that is positive news and we would like to see a written commitment to that effect. However, it is certainly not correct for the Applicant to give the Examining Authority the impression that, as matters stand, it is what the Applicant has agreed to do.</p> <p>g) 18 May 2024: after the first part of the CAH1 hearing on Friday 17 May, the Applicant emailed the Fischels to state that they would be willing to further discussions on the documents “once the commercial offer (i.e the cable payment) and plan is agreed”. Or, alternatively, that legal advice could be</p>	<p>summarising the reasoning for the rejection of Option C and responding to other queries within their Consultation response.</p> <p>The delay in sending the letter does not negate the significant amount of engagement that the Fischels have had, nor the outcome of the assessments of what is the most suitable route in this location. It would not have been possible to facilitate a change to the DCO boundary for the constraints identified within Option A (and detailed with the Letter dated 17 October 2023 – Appendix 18 within Applicant’s Responses to Relevant Representations [REP1-017]). The consultations were meaningful and led to the proposal of a materially more favourable cable route to the Fischels. This cable route was considered to be more suitable by the Fischels and the Applicant than the originally proposed Preliminary Environmental Information Report (PEIR) (RED, 2021) route and was therefore taken forwards to DCO submission.</p> <p>a) The Applicant has always explained that detailed cable design can only be carried out once preconstruction site investigation and surveys have been undertaken post consent. Whilst the Applicant can show on a plan an indicative cable route, for the proposals, this may be subject to change once surveys results have been received.</p> <p>b) Please see the comment above.</p> <p>c) At the site visit on 03 April 2024, the Land Interest put forward an alternative route ‘Option D’ which is a variation on Option A. Further information on Option A can be found within Appendix 17 and 18 of the Applicant’s Responses to Relevant Representations [REP1-017] and Letter dated 06 July 2024. The Fischels did not provide a plan on 03 April 2024 and simply pointed towards a hedgerow, indicating they would prefer the cable to leave their land on the eastern boundary. Subsequently, on 02 May 2024, the Applicant’s agent sent a plan to the Fischel’s (with a rough drawing of a cable route) to obtain clarification on this alternative route they wanted to be assessed. On 10 May 2024, the Land Interest confirmed that the cable route drawn by the Applicant’s agent on the map was the route they wanted assessed (Option D).</p> <p>d) Please see comments in ‘f’ below.</p> <p>e) Please see comments in ‘f’ below.</p> <p>f) The plan contained a text box with the commitment of keeping the cable as far south as practicable as discussed with Mr and Mrs Fischel. Further the Applicant had offered to include this commitment in the key terms (and therefore a voluntary agreement) in the email from the Applicant to Mr and Mrs Fischel dated 22 April 2024 (Land Engagement Report (Document Reference: 4.6.7) for the email). An offer of an undertaking has recently been made by the Applicant to the Land interest directly (email dated 28 June 2024) as this specific legal undertaking request had not been raised at the meeting with the Applicant and the Applicant awaits confirmation from the land interest of the appropriate contact for issuing the undertaking described above.. Discussions are ongoing with the Land Interest with regard to the Applicant’s ability to use reasonable endeavors to maximise distances between the cable corridor and the ancient woodland in the west and the pond to the north west corner of the land. It is hoped that the commitments can be included in agreed terms but the Applicant is, in any event prepared to provide an undertaking to reflect the commitments already made at this stage subject to confirmation from the Land Interest of the request. It is evidenced that the Applicant is actively negotiating and engaging with the land interest in the Land Engagement Report (Document Reference: 4.6.7).</p>

Ref	Deadline 4 submission	Applicant's comments
	<p>taken but only in connection with priority areas of concern in the key heads of terms, and that that would also be subject to agreement of the commercial offer. As put forward in the Fischels' submissions at CAH1, the carrying out of negotiations on a DCO should not be blocked by the lack of an agreement as to compensation.</p>	<p>The negotiations have continued with the Land Interest and their agent despite the lack of engagement from the Land Interest's agent regarding the level of compensation. Whilst the Applicant is still seeking to make progress on other terms, the Applicant reiterates its request to hear from the Land Interest on the commercial offer.</p>
2.29.54	<p>3.3.4. As will be clear from the above, the plans that the Applicant has provided the Fischels with do not address nor alleviate their concerns. In relation to the comment that the Applicant has recently offered a commitment to the Fischels to locate the cable as far south as practicable, taking into account environmental and engineering requirements; as has been reiterated at every occasion by the Fischels, a text box on an interim plan is not sufficient: to resolve the Fischels' concerns. They would require a legally binding commitment from the Applicant to do what it said it would do at CAH1, namely stay to the right hand boundary. Further, the caveat noted on the plan "taking into account environmental and engineering requirements" is very broad, and provides the Applicant with so much discretion as to render the commitment ineffective. Put another way, there is simply no commitment from the Applicant in existence to address the Fischels' concerns about where the cable corridor is.</p>	<p>The Land Interest's representative suggests that the Applicant's offered commitments to keep the cable as far south (and if required as far east) as possible subject to environmental and engineering requirements should be offered by way of a legal undertaking. As explained to the landowner and the landowners agent on site, the cable corridor cannot follow a fixed line along the right hand field boundary for the reasons set out in the documentation regarding required flexibility to ensure the project is not put at material risk of non-delivery.</p> <p>Please also see Applicant's Responses to Examining Authority's First Written Questions (ExQ1) [REP3-051] and Applicant's Response to Actions Points Arising from Issue Specific Hearing 2 and Compulsory Acquisition Hearing 1 [REP4-074].</p> <p>The Applicant continues to work with the Land Interest to establish key and agreed set of design/ construction principles which can be documented in either a legal undertaking or legal agreement. The Applicant awaits a response on the suggested list of key principles sent to the land interest on 05 July 2024 and will give reasonable consideration to any proposed amendments.</p>
2.29.55	<p>3.3.5. In relation to the Applicant's comments that the Fischels have a land agent who could provide detailed engagement on terms of an offer, plans and key terms; that is of course correct, but a land agent cannot provide legal advice, and what the Applicant is suggesting is for affected persons (such as the Fischels) to sign legal documents without legal advice.</p>	<p>The Applicant is willing to include commitments within the Heads of Terms which will in turn be included in a legal option agreement for construction of the cable and a deed of grant. The Applicant is awaiting details to be able to provide an undertaking for legal fees. The Applicant is not seeking to prevent the land interest from taking legal advice on legal documents.</p>
2.29.56	<p>3.3.6. In relation to the Applicant's comments that the site specified need for flexibility was addressed in its Deadline 2 submission [REP2-028], Applicant's Response to Affected Parties' Written Representations: the Fischels have already responded to this in quite some detail in section 4 of their Deadline 3 submission [REP-132].</p> <p>3.3.7. As to the Applicant's comments regarding the NSIP being undeliverable if the compulsory acquisition rights over the Fischels' land are removed from the dDCO, that is not correct: the Applicant could still acquire the necessary rights by agreement. That is what the Applicant should be attempting to do throughout the DCO process. It is rare, but not unheard of for a DCO to be made without compulsory powers: as set out in paragraph 2.47 above, the CAH Guidance states that "There may be circumstances where the Secretary of State could reasonably justify granting development consent for a project but decide against including in an order the provisions authorising the compulsory acquisition of the land". It is worth also drawing the Examining Authority's attention to a recent Compulsory Purchase Order decision in 2022 in which the Inspector refused to grant the compulsory purchase powers on the basis that there was no meaningful attempt by the Applicant to negotiate with affected parties; paragraph 376 of that decision states:¹</p>	<p>At present, the Land Interest is not willing to conclude an agreement for the land rights sought, nor has the Land Interest provided responses specifically to the Heads of Terms to enable the Applicant to understand what any points of disputes on the financial offer are or how they may be overcome. Further the Land Interest has not yet confirmed acceptance of the key construction and design principles put forward by the Applicant. Voluntary agreement with the land interest is not currently an alternative to compulsory acquisition, and compulsory acquisition powers are therefore necessary, without which the project could not proceed in a reasonable timescale, if at all.</p> <p>The non grant of Compulsory Acquisition (CA) rights would put the delivery of a major national infrastructure project proposed to deliver enough renewable electricity for the needs of the equivalent of all the homes in West Sussex at significant risk.</p> <p>The Land Interest refers to the London Borough of Barking and Dagenham Council (Vicarage Field and Surrounding Land) Compulsory Purchase Order 2021, which was refused by an Inspector on 4 October 2022. The circumstances of that CPO are vastly different to the Proposed Development as it concerned the acquisition, relocation or extinguishment of businesses in an existing shopping centre.</p>

Ref	Deadline 4 submission	Applicant's comments
	<p>The efforts to acquire the CPO lands by private treaty have also been largely ineffective. Claims are made by objectors that the financial offers have not been market value, and it is the shopping centre that has failed, not the surrounding businesses on Ripple Road and Station Parade. There have also been limited efforts to relocate those affected by the CPO to date. A 'not before' date has been absent and this has resulted in those subjected to the CPO unable to fulfil business plans, living in limbo for a long period of time. Full information was also not provided at the outset and there was no clearly specified case manager.</p>	<p>The reasons for refusing the CPO were many, including:</p> <ul style="list-style-type: none"> - The Inspector was not satisfied that the scheme was viable, particularly as the evidence that accompanied the planning application found the scheme to be 'substantially unviable'. This does not apply the Proposed Development, for which the Applicant has provided a comprehensive Funding Statement which has not been challenged; - The Inspector was not satisfied that there was sufficient financial resources to compensate for business extinguishment. This does not apply to the Proposed Development. No businesses are to be extinguished and the Applicant's evidence in the Funding Statement on its ability to meet compensation liability is unchallenged; - No evidence as to need/future commercial occupation. This does not apply to the Proposed Development for which the needs case is fully grounded in National Policy; - A failure to negotiate in line with the DLUHC (2019) CPO Guidance. The Applicant's land acquisition strategy has regard to both the Planning Act 2008 CA Guidance (MHCLG, 2013) and the DLUHC Guidance (2019). Further explanation is provided in the Applicant's Land Acquisition Strategy (Document Reference: 8.92); - Claims that financial offers were substandard. This does not apply to the Proposed Development. No land agent acting on behalf of a land interest has demonstrated that financial offers have not been market value. The Applicant's original offers have reflected the freehold market value of the land, despite only new rights being sought, which is well in excess of the Compensation Code statutory basis of compensation. Enhanced offers have recently been made which go even further above the freehold market value of rural land. This is further explained in the Land Acquisition Strategy (Document Reference: 8.92). - Extensive delays in progressing the scheme, with 3 years from the Cabinet resolution to make the CPO before it was actually made, increased the uncertainty for businesses. This does not apply to the Proposed Development, which has been progressed in a timely way, having regard to statutory consultation requirements. - Lack of information provision at the outset. This does not apply to the Proposed Development which has been subject to extensive consultation, both statutory and non-statutory. <p>The Applicant is not seeking to acquire land, save at the substations, nor will its acquisition require the relocation or extinguishment of businesses. There will be temporary impacts on land use during construction of the scheme but the Applicant has given binding commitments which are secured by the DCO to seek to minimise land acquisition and mitigate land impacts.</p> <p>The Vicarage Fields CPO decision is not at all comparable to the Proposed Development.</p>
2.29.57	<p>3.3.8. We have bolded in the text above the matters that appear analogous to the current situation, While decided under the different legal framework, the principles are the same here in relation to compulsory purchase: submissions at the hearing alongside the updates in the Land Rights Tracker make clear that discussions with affected parties are ineffective, the Applicant is making minimal effort to address parties' concerns, and those subject to compulsory acquisition powers under the draft Development Consent Order (dDCO) are expected to wait in a state of limbo until the Applicant carries out its assessments to determine exactly how much land it really does need for the scheme.</p>	<p>The efforts to acquire the land rights voluntarily have led to a number of design and construction principles and commitments to be offered by the Applicant by way of a legal undertaking and also as an appendix to Heads of Terms documents and options for the deed of grant. Please refer to Applicant's Land Engagement Report (Document Reference: 4.6.7). Effective discussions require meaningful engagement by both the Applicant and the Land interest. The land engagement report explains the sharing of information and the discussions surrounding commitments that have taken place both prior to and subsequent to the CA Hearing. The claim that the Applicant is making minimum effort to address concerns is unfounded.</p>

Ref	Deadline 4 submission	Applicant's comments
2.29.58	3.4. Finally, it is noted that since the close of the CAH1, the Applicant has not made any contact with the Fischels to address the matters raised, even though Mr Fischel spoke to a representative of the Applicant immediately after the CAH and despite the clear and strong indication from the Examining Authority that it should do so.	<p>Even pursuant to site investigations, a level of flexibility will be required for construction of the works for example in the event of unexpected constraints as detailed in the response to reference 2.29.31 above.</p> <p>Please refer to the Applicant's Land Engagement Report (Document Reference: 4.6.7). The Applicant notes the following key correspondence and site meetings :</p> <p>Email correspondence took place with the Land Interest further to their return from holiday 11/ 14 and 17 June 2024.</p> <p>A meeting/ site visit with the Applicant's land transaction manager on 20 June 2024 to discuss, next steps for agreement of the plan, buffers from ancient woodland and pond in the north west corner of the land and visibility splays.</p> <p>Meeting/ site visit with the Applicant's land transaction manager and engineer to discuss visibility splay requirements on 25 June 2024. An offer of in principle commitment relating to visibility splay vegetation removal at Spithandle Lane put forward verbally by the Land Transaction manager and engineer – which it was agreed to be followed up by the Applicant by email and included within the key terms as agreed with the Land Interest.</p> <p>Email correspondence was exchanged regarding plans and legal undertakings on 28 June 2024 and a list of commitments provided by email on 05 July 2024.</p>

Table 2-30 Applicant’s comments to Wiston Estate Deadline 4 submission #1 [REP4-136]

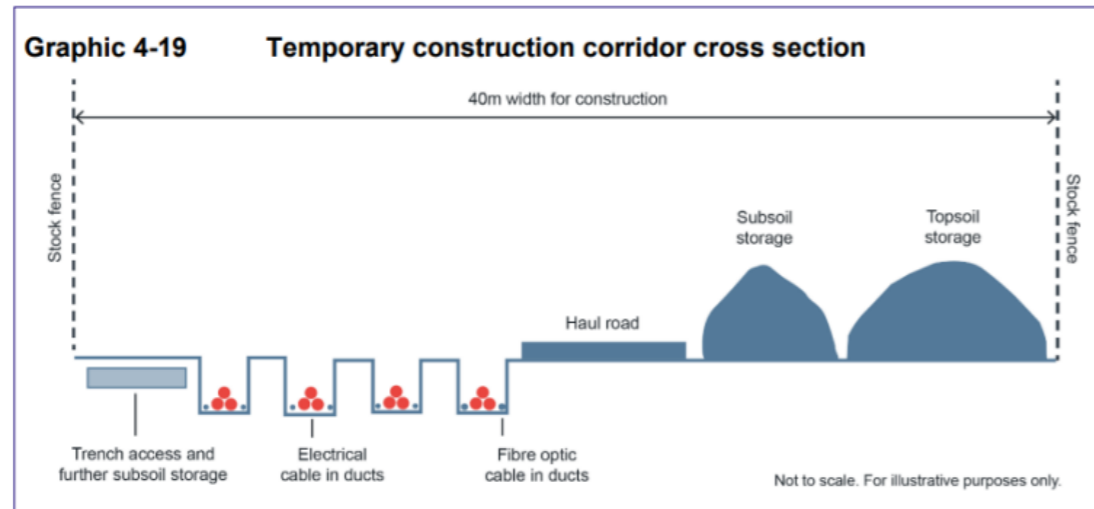
Ref	Deadline 4 submission	Applicant’s comments
2.30.1	<p>1. Executive Summary Rampion Extension Development Ltd. (‘the Applicant’), a joint venture between RWE Renewables UK Limited (RWE), Enbridge, and a Macquarie-led consortium, is seeking Development Consent for the Rampion 2 Wind Farm (the ‘Proposed Development’). This includes an underground Onshore Cable Route approximately 38.8km long.</p>	<p>The Applicant has reviewed the “Rampion 2 Cable Route Alternatives & Mineral Sterilisation” document [REP4-136], which provides a high level assessment of the potential sterilisation of minerals from the Proposed Scheme and also identifies possible alternate cable routes that will minimise the sterilisation of minerals.</p>
2.30.2	<p>A considerable length of the Onshore Cable Route for the Proposed Development passes through the Wiston Estate (‘the Estate’) and our high level assessment concludes the route is likely to sterilise approximately 7 million tonnes of soft sand mineral, as well as significantly impact ongoing and future operations for the Estate and its tenants. For the avoidance of doubt, the approximate route of the proposed cable route in this area is shown below by the red line.</p>	<p>Detailed comments on the contents of Rampion 2 Cable Route Alternatives & Mineral Sterilisation [REP4-136] are provided in the following sections, however there are a number of overarching issues which are relevant to raise as well. These are outlined here:</p>
2.30.3	<p>We have assessed three alternative cable routes which significantly reduce the amount of mineral sterilisation the Proposed Development will cause.</p>	<p>The assessment does not acknowledge the point, confirmed at Part 24.9 of Chapter 24 Ground conditions, Volume 2 of the Environmental Statement [APP-065], that: ‘once the onshore cable was decommissioned, the cable could be removed by a minerals developer to gain access to the resource.’ This means that all the figures for sterilisation identified within the Rampion 2 Cable Route Alternatives & Mineral Sterilisation [REP4-136] assessment are presented as though they are permanent, whereas the Rampion 2 development will ultimately be subject to decommissioning and a mineral developer could proceed with extraction at this time. In this event, the effects of removing the cable at that point would be no different from the preparation works required for the minerals extraction, where the removal or relocation of existing utility infrastructure is commonplace.</p>
2.30.4	<p>The modified Washington B Route alternative, shown in blue below, would reduce the amount of mineral sterilisation from approximately 7 million tonnes to 600,000 tonnes, a reduction of 6.4 million tonnes.</p>	<p>This is an important distinction as the Applicant’s view is that ultimately the Proposed Scheme will not reduce the long-term potential of the land for mineral extraction after any future decommissioning has taken place, consistent with requirements set out at Paragraph 5.110.9 of the 2011 National Policy Statement (NPS) EN-1 (and re-stated at paragraph 5.11.19 of the 2023 NPS-EN1).</p>
2.30.5	<p>The Wiston Estate Southern Route alternative, shown in pink below, would reduce the amount of mineral sterilisation from approximately 7 million tonnes to 600,000 tonnes, a reduction of 6.4 million tonnes.</p>	<p>The Applicant is aware that West Sussex County Council and South Downs National Park Authority undertook a site search exercise in relation to minerals sites in order to inform the production of the Joint Minerals Local Plan. The matter of soft sand within the Joint Minerals Local Plan has also been subject to a Soft Sand Review (SSR) as required by Policy M2 of the adopted Joint Minerals Local Plan (adopted July 2018). The SSR considered the need for soft sand during the plan period (to 2033) and resulted in formal changes to the Plan, which were adopted by the Authorities in March 2021. The evidence provided for the SSR included a Soft Sand Sites Selection Report (West Sussex County Council and South Downs National Park Authority, 2020) which has been used by the Applicant to provide evidence within this response.</p>
2.30.6	<p>The Yellow Route alternative, shown below in yellow, would reduce the amount of mineral sterilisation from approximately 7 million tonnes to 2.5 million tonnes, a reduction of 4.5 million tonnes.</p>	<p>The Applicant is also of the view that the alternate routes identified in the assessment as ‘likely to be technically deliverable’ are presented to the examination without any reference to physical and environmental constraints that undermine the deliverability of these alternate routes. Details are set out below.</p>
2.30.7	<p>We consider that the three alternative routes are technically deliverable and will reduce mineral sterilisation and impacts on the operations of the Estate, with the modified Washington B alternative route and the Wiston Estate Southern alternative route providing the most significant reductions.</p>	
2.30.8	<p>2. Introduction</p>	<p>The Applicant has no further comments on the matters in these paragraphs at this time.</p>

Ref	Deadline 4 submission	Applicant's comments
	<p>The DCO application for the Rampion 2 Offshore Wind Farm ('Rampion 2') has been accepted for examination by the Planning Inspectorate and the examination is currently taking place.</p> <p>The Applicant is Rampion Extension Development Ltd. , a joint venture between RWE Renewables UK Limited (RWE), Enbridge, and a Macquarie-led consortium.</p> <p>The application includes all the onshore electrical infrastructure required to transmit the power to the final connection into the national electricity network at Bolney in Mid Sussex. This includes an underground onshore cable route approximately 38.8km long from the landfall at Climping to a new onshore substation at Oakendene, 2km east of Cowfold.</p> <p>Approximately 10% of the onshore cable route passes through the Wiston Estate (the Estate) and, as proposed by the Applicant, will sterilise a significant quantity of minerals.</p> <p>Avison Young has been appointed by the Wiston Estate to assess the likely level of mineral sterilisation and to assess the potential for alternative cable routes through the Estate to minimise the sterilisation of minerals. This report addresses cable routing and mineral sterilisation issues only and does not deal with impacts on estate operations or vineyard development which are being dealt with separately.</p>	
2.30.9	<p>3. The Proposed Onshore Cable Route</p> <p>An overview of the Onshore elements of the Proposed Development is provided at section 4.5 of Volume 2, Chapter 4, The Proposed Development of the Environmental Statement (APP-045).</p> <p>This will include the following key components:</p> <ul style="list-style-type: none"> - a temporary onshore cable corridor, approximately 38.8km in length from the landfall at Climping to a new onshore substation at Oakendene, and from the new onshore substation to the existing National Grid Bolney substation, typically 40m in width within which the following will be located: - permanent infrastructure corridor width up to 25m, or wider at HDD crossing locations, including HVAC transmission cables and associated joint bays; and - temporary infrastructure including trenchless crossing areas, temporary construction compounds and the associated access requirements. 	The Applicant has no further comments on the matters in these paragraphs at this time.
2.30.10	<p>The cable system (up to 275kV) along the onshore cable route will comprise a maximum of 20 buried cables arranged as four cable circuits in separate trenches. These will run along the length of the onshore cable route from the landfall at Climping through to the new onshore substation at Oakendene. Each circuit will contain three Power Cables (HVACs) and two Fibre Optic Cables (FOCs) drawn through pre-installed ducts.</p>	
2.30.11	<p>The standard temporary construction corridor will be up to 40m wide and consist of the trenches, excavated material and a temporary construction haul road. The temporary construction corridor may require widening beyond the standard width to allow enough space for access / equipment at trenchless crossings and to avoid obstacles.</p>	

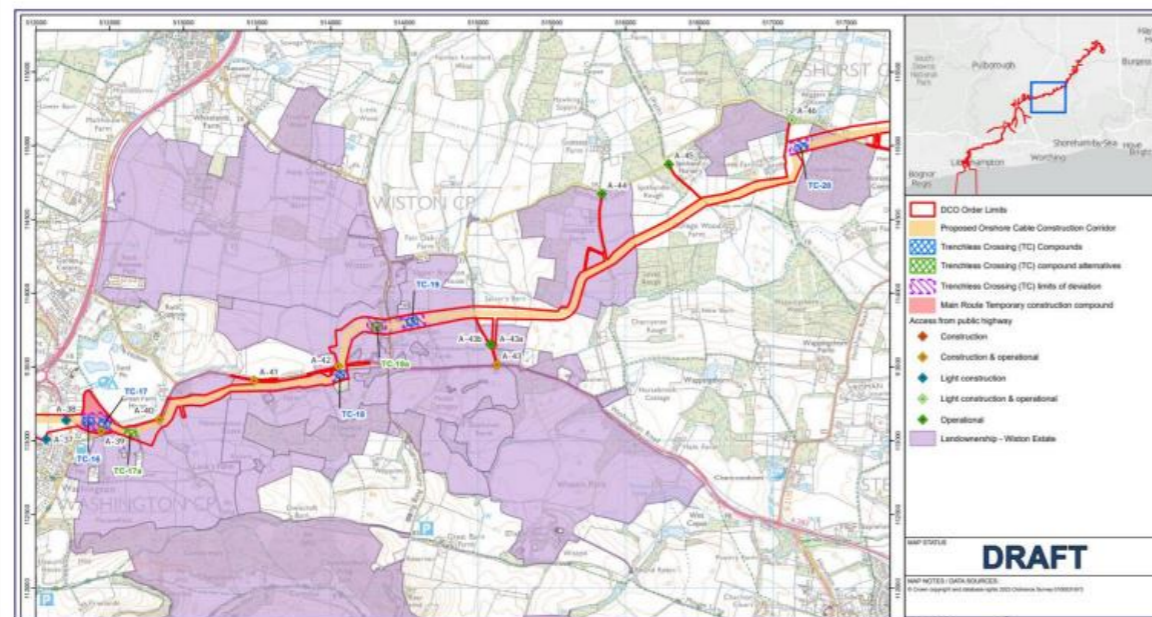
Ref Deadline 4 submission

Applicant's comments

2.30.12 Graphic 4-19, provided below, is an extract from APP-045 and presents a cross section to illustrate the layout of a temporary construction corridor.



2.30.13 The plan below provides an overview of the proposed route through the Estate.

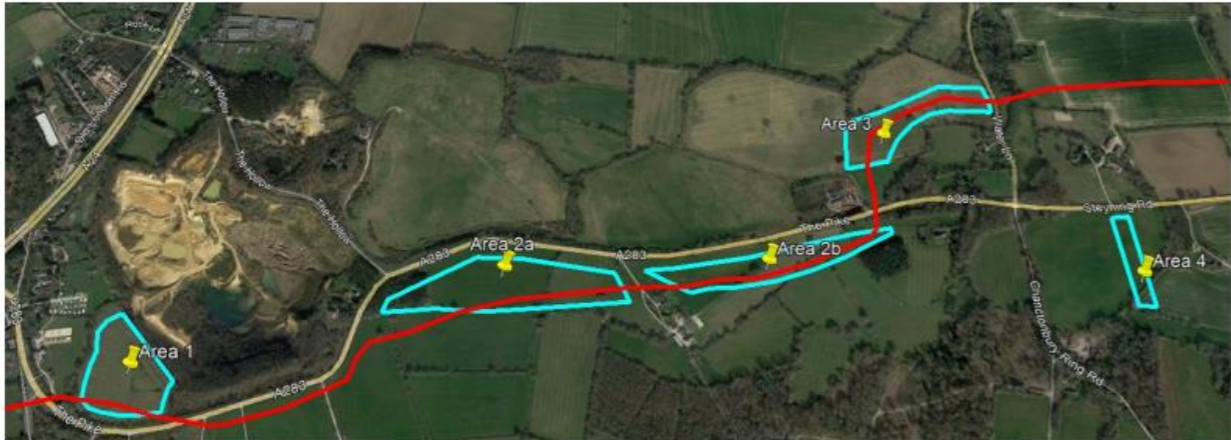


2.30.14 4. Mineral Sterilisation from the Proposed Route

We have undertaken a high level assessment of the potential for soft sand mineral sterilisation as a result of the Proposed Development.

2.30.15 We note the Applicant's Order Limits are much wider than the construction corridor they will need as they required a degree of flexibility before they carry out detailed design. We have calculated the impacts of sterilisation on minerals using a worst case scenario as a result of this flexibility. However, we have also applied a level of conservatism to our estimate based on information provided by the previous and current operators of Rock Common Quarry, as is set out below.

The information used for the high level assessment identified in 2.4.1, is provided within Rampion 2 Cable Route Alternatives & Mineral Sterilisation [REP4-136] and is based on historical information for which the authors themselves note they do not have available the detail which underpinned those historic calculations. In the following sections, the Applicant has noted where this data appears unreliable or could be interpreted to provide differing results to those provided. It is also noted that the Wiston Estate have used similar assumptions in Rampion 2 Cable Route Alternatives & Mineral Sterilisation [REP4-136] to those used by the Applicant (e.g. the buffer zone from the highway). It is the Applicant's opinion that these inconsistencies and the use of assumptions reinforce the Applicant's position that the exact

Ref	Deadline 4 submission	Applicant's comments
2.30.16	From the available evidence it is clear to us that the mineral resource on the Wiston Estate is not limited to the minerals safeguarding area ('MSA') within the Joint Minerals Local Plan for West Sussex.	minerals sterilisation numbers cannot be accurately calculated at this time and the Applicant's calculations in Chapter 24 Ground conditions, Volume 2 of the Environmental Statement [APP-065] therefore remain suitable for determining EIA significance. The data available does not allow robust comparisons to be made between any of the alternative routes suggested and the Proposed Development.
2.30.17	We have divided this assessment into four areas where there is evidence of minerals being present and where we consider that the proposed cable route would sterilise the mineral. These areas are addressed below.	It is also relevant to note that whilst the assumptions that have informed the assessment in Rampion 2 Cable Route Alternatives & Mineral Sterilisation [REP4-136] of how much soft sand might be sterilised are set out in Part 4 of the document, the Applicant's view is that the assessment is of limited value as it is presented without any acknowledgement of significant physical and environmental constraints that are likely to be either an ' <i>in principle</i> ' barrier to the recovery of the mineral at all, or will substantially limit the amount of mineral that could be recovered in practice.
2.30.18	We have assumed an average depth of 40m across each of the areas assessed. This is because there is a BGS borehole (REF. 578124, TQ11SW10) at Lower Chancton farm which shows a minimum depth of soft sand at 33m. At Rock Common Quarry to the west the depth of mineral is over 50m, this is underpinned by operational experience and a borehole record from 1992. As such we have assumed an average depth of 40m across the areas assessed. We have also provided a buffer of approximately 35m from roads where we assume there will not be any mining activities to reduce the risk of impacting the infrastructure in place.	Details of how the data used in the calculations is considered to be unreliable is provided in the following sections of this response, with details of the constraints relevant to each area set out in below.
2.30.19	The areas which we have assessed are shown below with further information provided in the following sections of the report.	
2.30.20		<p>Area 1:</p> <ul style="list-style-type: none"> There is no acknowledgement of a Public Right of Way (identified as Footpath 2701 on Sheet No. 22 of the submitted Access, Rights of Way and Street Plan [APP-012] which effectively bisects the identified mineral reserve, nor any assessment of whether it would act as a constraint on the amount of recoverable mineral reserve. The edge of this area is located around 35 metres from Washington Caravan and Camping Park. No consideration is given to the impact that extracting soft sand would have on the amenity of these properties. For context, elsewhere in the assessment a standoff of 100 metres is used in relation to houses (for Shirley Farmhouse for Area 2b, and Butcher's House for Area 3). Part of Area 1 was included within a site submission (Rock Common West) to the Joint Minerals Local Plan to be considered for an allocation for future minerals extraction. The Soft Sand Sites Selection Report (West Sussex County Council (WSSCC) and South Downs National Park Authority (SDNPA), 2020) sets out at Paragraph 2.2 that "<i>The Rock Common West site was eliminated because the Environment Agency had concerns that minerals extraction would exacerbate an unsatisfactory situation relating to the restoration of Rock Common sandpit (in relation to hydrogeology).</i>" <p>Areas 2a and 2 b:</p> <ul style="list-style-type: none"> The submitted assessment does not acknowledge the fact that both of these sites are located within the South Downs National Park. This means that the starting point for determining any major planning application, including the extraction of minerals, is that it '<i>should be refused</i>' other than '<i>in exceptional circumstances, and where it can be demonstrated that the development is in the public interest</i>' as set out in Paragraph 183 of the NPPF. The Soft Sand Site Selection Report (WSSCC and SDNPA, 2020) considered a site 'Rock Common South' which forms part of Area 2a. Rock Common South was discounted for consideration as an allocation due to "<i>Unacceptable impact on</i>"

Ref	Deadline 4 submission	Applicant's comments
		<p><i>landscape character. The proposal would be seen in context of the South Downs National Park and long views to the site will increase visual impact."</i></p>
		<p>Area 3:</p> <ul style="list-style-type: none"> This area is located outside of the Mineral Safeguarding Area, and there is no evidence within the submitted assessment to support the asserted presence of a mineral reserve of around 1.8 million tonnes. The Mineral Sites Study produced to inform the Joint Minerals Local Plan does not contain any consideration of the site identified as Area 3 in the submitted assessment and the Applicant cannot find any record that this site was submitted to be considered for selection in the Draft West Sussex Joint Minerals Local Plan. An adjoining site known as Buncton Manor Farm (the easternmost part of which overlaps with the westernmost part of Area 3) was assessed through the Joint Minerals Local Plan process for potential allocation. The Soft Sand Site Selection Report (WSCC and SDNPA, 2020) concluded that: <i>"The site is not considered suitable for extraction, and therefore ruled out. The site is highly visible from important Public Rights of Way within the SDNP, specifically from the South Downs Way and from the Chanctonbury Ring (scheduled ancient monument)."</i>
2.30.21	<p>Area 1) Land south-west of Rock Common Quarry This plot extends to approximately 14 acres has the prospects of a quarry extension from Rock Common Quarry. It has been evaluated historically by Tarmac Quarry Products who were a previous operator of Rock Common Quarry. Tarmac estimated a mineral reserve of 400,000 tonnes of soft sand which would be workable from the existing quarry workface. Please see Appendix 1 which provides further information on the Tarmac estimate.</p>	<p>From the information provided to support the Tarmac estimate of 400,000 tonnes of sand within Area 1, it is notable that Tarmac estimated that an area of land of 14 acres in size could produce 400,000 tonnes of sand. 14 acres equates to approximately 5.7ha and 400,000 tonnes equates to a volume of approximately 266,667m³ (at a ratio of 1.5 tonnes / m³). This would indicate a thickness of sand in this area of around 4.7m.</p>
2.30.22	<p>The presence of the onshore cable route, as proposed by the Applicant, would sterilise the extraction of soft sand from the area beneath the cable route, where the mineral resource is at its widest. As this area will be either the launch or reception area for a Horizontal Direction Drill, it is almost certain the cable route will be wider than the 20m where cables are installed by open trenching. The minerals located under the cable route will not be workable for extraction and there will also need to be a buffer applied to ensure the cable route is not undermined by mining works. This reduces the area which can be developed and, in our opinion, has the potential to make the entire area unviable for mineral extraction as the marginal costs of extraction will be increased due to reduced economies of scale.</p>	<p>However, the Tarmac plan for the 14-acre site shows a similar area of land to that identified for Area 1 which Rampion 2 Cable Route Alternatives & Mineral Sterilisation [REP4-136] states to be around 2.9ha in area. If the 400,000 tonnes figure was correct for the 2.9ha of Area 1, this would equate to a sand thickness of around 9.2m.</p>
2.30.23	<p>We do not have sight of the Tarmac calculations which underpinned their assessment but are confident it concerned only part of the area which will be affected by the Proposed Development. To work the mineral, the existing quarry screening bank would be moved to the southern edge of the property, immediately north of the A283, and the mineral worked via the existing quarry infrastructure with overburden being used to fill or cap the existing void space. The presence of the Applicant's cable route and the restrictive covenants which form part of the Applicant's proposed easement for the cable route means moving the screening bund to the area above the cable route will not be possible. Furthermore, we understand the Applicant intends to remove existing screening from the area immediately north of the A283 to provide visibility splays for the proposed access from the A283 to the construction compound the Applicant proposes in this area. In our opinion this means it is unlikely to be viable to undertake any future mining activities in this area.</p>	<p>The inconsistencies in potential site areas and sand thicknesses raise queries around the accuracy of the provided figures, both for Area 1 and the other areas of land identified below.</p>

Ref	Deadline 4 submission	Applicant's comments
2.30.24	Based on an area of 29,000m ² , an assumed average depth of mineral of 50m and a density of 1.5 tonnes/m ³ , we estimate the Applicant's proposals have the potential to sterilise over 2 million tonnes of sand.	
2.30.25	However, for the purposes of this report we have conservatively adopted the Tarmac figure of 400,000 tonnes of mineral present, and we consider that this is robust.	
2.30.26	We therefore conclude that the sterilisation as a result of the Proposed Development in this area is 400,000 tonnes	
2.30.27	2) Western and Eastern areas of Lower Chancton farm (south of the A283) There is a significant area of land stretching for approximately 1200m from the Pike in the west to Shirley House in the East with the potential for soft sand extraction.	See responses provided below to Areas 2a and 2b .
2.30.28	In Paragraphs 24.9.46 and 24.9.47 of document 6.2.24 Environmental Statement - Volume 2 Chapter 24 Ground Conditions (APP-065), the Applicant estimates 4.5 ha (11.12 acres) of land is affected by the Proposed Development which after discounting for the road buffer (35m), Lower Chancton Farm and the width of the cable route this reduces to 2.9 ha (7.17 acres) for the eastern area only (our area 2(b)). The Applicant has calculated sterilisation of 1.16 million m ³ using a depth of 40m which after conversion at 1.5 tonnes /m ³ equates to approximately 1.74 million tonnes of soft sand. We are of the view this provides a significant underestimate of the minerals in this area and have assessed further below.	
2.30.29	Area 2a) Western area of Lower Chancton farm The western end of this plot is considered by Rampion 2 to be too narrow after deducting for the buffer to the A283 to be economically viable for extraction and has such been discounted.	As noted in Rampion 2 Cable Route Alternatives & Mineral Sterilisation [REP4-136], the Tarmac submission states that the extraction of the 500,000 tonnes of sand identified "would only be acceptable if the A283 road is diverted to run south of the Site". (The "Site" being part of Area 2a).
2.30.30	Appendix 1 shows Tarmac Quarry Products were of the view that 500,000 tonnes of mineral was capable of extraction in association with a proposed road scheme. Irrespective of whether the road scheme materialised, the minerals are in the ground and capable of extraction.	Tarmac's calculations identify an area of land of around 10 acres (4ha) and a volume of sand of 500,000 tonnes (333,333m ³). This would indicate a thickness of sand of around 8.3m. This is well below the 40m thickness used in Rampion 2 Cable Route Alternatives & Mineral Sterilisation [REP4-136] and seems very difficult to reconcile with the figure of 3,000,000 tonnes identified in the assessment. This suggests that the 3,000,000 tonnes figure could be a substantial over-estimate.
2.30.31	However, the total area to the west of the access road into Lower Chancton Farm extends further east than Tarmac's proposed plan to 50,000m ² . Applying an average depth of mineral of 40m and a density of 1.5 tonnes /m ³ , this would result in the sterilisation of approximately 3 million tonnes.	Although Area 2a covers a greater area of land than that identified by Tarmac, Tarmac's view that extraction could "only" proceed with a diversion of the A283 provides more weight to the Applicant's previously stated position on severance in this area, i.e. Area 2a is too small an area to extract from and therefore no sterilisation can take place. There is no evidence before the examination of any proposals to divert the A283.
2.30.32	This means the area under the cables will not be workable for extraction and there will also need to be a buffer applied to ensure the cables are not undermined by mining works. This reduces the area which can be developed and, in our opinion, is likely to make the entire area unviable for mineral extraction.	
2.30.33	Sterilisation as a result of the Proposed Development: 3,000,000 tonnes	There is also no acknowledgement within Rampion 2 Cable Route Alternatives & Mineral Sterilisation [REP4-136] that Area 2a is located in close proximity to Lower Chancton (closer than the 100 metres standoff that Rampion 2 Cable Route Alternatives & Mineral Sterilisation [REP4-136] applied to Shirley House for assessing the workable mineral for Area 2b) nor any assessment of whether the need to protect residential amenity might impact on the amount of soft sand than can be recovered. Similarly, there is no recognition that Lower Chancton and the

Ref	Deadline 4 submission	Applicant's comments
		Granary at Lower Chancton are Grade II Listed buildings, nor any consideration of whether this could act as a constraint on the amount of soft sand that can be recovered.
2.30.34	<p>Area 2b) Eastern area of Lower Chancton farm For the eastern area of Lower Chancton Farm, after applying a 100 metre standoff to Shirley farmhouse and the buffer from the A283, we have calculated the sterilized area to be 30,000m². This equates to sterilisation of 1.8 million tonnes based on an average depth of mineral of 40m and a density of 1.5 tonnes /m³.</p>	The calculations provided in Rampion 2 Cable Route Alternatives & Mineral Sterilisation [REP4-136] in relation to Area 2b are broadly in line with those provided by the Applicant previously. The Rampion 2 Cable Route Alternatives & Mineral Sterilisation [REP4-136] total of 1,800,000 tonnes would equate to 1,200,000m ³ , which is similar to the Applicant's calculated position of 1,160,000m ³ .
2.30.35	This means the area under the cables will not be workable for extraction and there will also need to be a buffer applied to ensure the cables are not undermined by mining works. This reduces the area which can be developed and, in our opinion, is likely to make the entire area unviable for mineral extraction.	However, both of these calculations are based on a 40m thickness of sand being available and the Applicant would highlight that the uncertainties identified in Area 1 and Area 2a in regard to the thickness of sand would also be relevant here, meaning both of these calculations could be a substantial over-estimate.
2.30.36	Sterilisation as a result of the Proposed Development: 1,800,000 tonnes	As with Area 2a, there is also no acknowledgement within Rampion 2 Cable Route Alternatives & Mineral Sterilisation [REP4-136] that Area 2b is located in close proximity to Lower Chancton nor any assessment of the impact of the recovery of 1.8 million tonnes of soft sand on residential amenity. Similarly, there is no recognition of that Lower Chancton and the Granary at Lower Chancton are Grade II Listed buildings are in very close proximity to Area 2b, nor is there any consideration of whether this could act as a constraint on the amount of soft sand that can be recovered.
2.30.37	<p>Area 3) Land north of the A283 Road forming part of Upper Chancton Farm In 2015, this area was submitted to be considered for selection in the Draft West Sussex Joint Minerals Local Plan by Dudman Group who have extensive experience of working soft sand at Rock Common Quarry and have assessed the mineral in this area at between 2 and 4 million tonnes based upon the depth of historic sand extraction adjacent to the site.</p>	Rampion 2 Cable Route Alternatives & Mineral Sterilisation [REP4-136] does not provide any evidence of the submission made in 2015 by Dudman Group that is referenced, and therefore it cannot be determined whether the area in question is the same / similar to Area 3 and therefore whether the 2m-4m tonnes figure is a realistic comparison for the potential volumes in Area 3. The Applicant notes that Area 3 is located outside of the Mineral Safeguarding Area identified by West Sussex Council.
2.30.38	The cable route bisects the eastern area of this mineral search area and effectively sterilizes an area of 30,000 m ² . After adopting a 5 m standoff to the eastern and northern hedge line and a 100 m buffer to Butcher's house and utilizing the same calculations adopted by Rampion 2 (a mineral depth of 40m) and a density of 1.5t/m ³ , provides for a potential mineral sterilization of 1.8 million tonnes.	The Applicant is aware that a site, known as 'Bunton Manor Farm' was considered in the Soft Sand Sites Selection Report which has a small area of overlap with Area 3, but mainly covers a wider area to the west. The far larger Bunton Manor Farm site (with an area of 20 hectares) is assessed as comprising an estimated reserve of 1 million tonnes of soft sand. This would give a thickness of sand of around 3m, rather than the 40m figure used for Area 3. If 3m was relevant for Area 3 this would provide around 135,000 tonnes, which is a far lower figure than the 1.8 million tonnes of soft sand contained within the Rampion 2 Cable Route Alternatives & Mineral Sterilisation [REP4-136] assessment.
2.30.39	The area under the cables will not be workable for extraction and there will also need to be a buffer applied to ensure the cables are not undermined by mining works. This reduces the area which can be developed and, in our opinion, is likely to impact the viability of mineral extraction.	
2.30.40	Sterilisation as a result of the Proposed Development: 1,800,000 tonnes	

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2.30.41 **Summary of mineral sterilisation as a result of the Applicant's proposed Onshore Cable Route**

Area	Sterilised Minerals (tonnes)
1) Land south-west of Rock Common Quarry	400,000
2a) Western area of Lower Chancton farm	3,000,000
2b) Eastern area of Lower Chancton farm	1,800,000
3) Land north of the A283 Road forming part of Upper Chancton Farm	1,800,000
Total	7,000,000

The Applicant would highlight that the uncertainties identified across Areas 1, 2 and 3 in regard to the thickness of sand mean the calculation provided could also be a substantial over-estimate.

2.30.42 **Sterilisation as a result of the alternative routes.**

It is also necessary for us to address a further area (area 4). This area would be subject to some sterilisation by two of the alternative routes we address below (Washington B modified route and the Wiston Estate southern route). This area forms part of the MSA and is located south of the A283, approximately 300m south of Buncton Manor Farm. We note the presence of the existing gas main already has a sterilising effect in this area but have measured the additional area to be sterilised as a result of the Proposed Development to be approximately 10,000m² which, assuming a mineral depth of 40m and a density of 1.5t/m³, equates to 600,000 tonnes of sterilisation.

We now turn to discuss some potential local alternative routes which we consider would lead to significantly less of an impact upon minerals.

2.30.43 **5. The Modified Washington B Alternative Route**

The extract provided below is taken from Figure 3.5 - Overview of Onshore cable route refinements considered between Scoping and Statutory Consultation 2021 from document 6.3.3 Environmental Statement - Volume 3 Chapter 3 Alternatives - Figures (APP-075) and shows the Washington A and Washington B routes.

The report submitted by the Wiston Estate has asserted that an assessment has been made of the 'Modified Washington B Alternative Route'. The Applicant considers that the assessment of this route by the Wiston Estate is wholly inadequate in demonstrating that the route as described is suitable from an engineering technical delivery perspective and has does not fully

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assess the environmental impacts, therefore this does not provide a reasonable alternative to the Proposed Development.

The 'Modified Washington B Alternative Route' largely follows the route known in prior submissions as the 'Blue Route'. The Applicant has detailed how consideration of the Wiston Estate's proposed 'Blue Route' was undertaken prior to submission of the DCO Application within the following submissions:

- **Applicant's Response to Relevant Representations [REP1-017]** under reference LI89.4
- **Applicant's Response to Affected Parties' Written Representations [REP2-028]** under references 2.28.11 and 2.28.12.
- **Applicant's Comments on Deadline 3 Submissions [REP4-070]** under references 2.28.11 and 2.28.12.
- **Applicant's Response to Action Points Arising from Issue Specific Hearing 2 and Compulsory Acquisition Hearing 1 [REP4-074]** in Table 2-2 in response to CAH1 Action Point 10.

2.30.44 An extract from Table 3-6 'Onshore cable route options considered between Scoping and first Statutory Consultation exercise' from document 6.2.3 Environmental Statement - Volume 2 Chapter 3 Alternatives (APP-044) is provided below, setting out the rationale which the Applicant applied when assessing these routes.

Location	Options considered	Option(s) chosen and reason
Washington	Washington A – initial appraisal study route	Initial appraisal study route at the Scoping stage, but not included in PEIR Assessment Boundary (RED, 2021) due to technical construction challenges (including side slope, resulting challenges to reinstatement) and the risks and restrictions due to proximity to functionally linked habitat to Arun Valley SPA. Additionally, options for trenchless crossings to avoid constraints (including Scheduled Monument and ancient woodland) would be of a length that would adversely derate the cable.
	Washington B – to reduce technical difficulties associated with a slope and potential environmental impacts.	Considered following Scoping and included in PEIR Assessment Boundary (RED, 2021) as this avoids technical difficulties associated with Washington A.

The Applicant has provided further commentary where possible based on the Wiston Estate's description of the new 'Modified Washington B Alternative Route' as follows:

- The route requires approximately 2.25km of additional length of cable and construction works within the South Downs National Park compared to the Applicant's proposals. The route proposed by Wiston Estate does not reduce or minimise impacts within the South Downs National Park (SDNP), and there is no assessment on its Special Qualities, nor does it demonstrate any attempt to seek to further the purposes of the SDNP;
- There is no acknowledgement that the route requires approximately 2km additional cable route through Archaeological Notification Areas: 'Prehistoric Features on Barns Farm Hill and Highden Hill, Storrington and Sullington and Washington' that is unaffected by the Applicant's proposals;
- There is also no acknowledgement in the assessment that approximately 1km of the route runs immediately to the north of Chanctonbury Hill Site of Special Scientific Interest, nor any assessment of whether this might act as a constraint on this alternate route; and
- The impact on the users of the South Downs Way is not recognised nor are there any measures proposed to address the issues for users, with the proposals requiring shared use with construction traffic and additional crossings.

2.30.45 We have assessed an alternative route to the Applicant's proposed onshore cable route which modifies the Washington B route to minimise the sterilisation of minerals at the Estate. This route is referred to the Modified Washington B Alternative Route. (NB To avoid confusion to those who will read this report, we note it appears the Applicant has mixed up the references to the Washington A and Washington B routes in the extract above).


A description of this route is provided below.

2.30.46 From south of Sullington Hill, which, for the avoidance of doubt is not located on the Wiston Estate, the cable route moves east, towards the A24, which it would cross under using a trenchless crossing, before heading north-east between the operational chalk quarry and the gas distribution site. From this location a short HDD (approx. 270m) would be used to pass under the western part of Combe Holt (Ancient Woodland). There is ample space available

The Applicant notes that National Policy Statement (NPS) EN-1 (Department for Energy Security and Net Zero (DESNZ), 2024) paragraph 4.3.29 states:

"It is intended that potential alternatives to a proposed development should, wherever possible, be identified before an application is made to the Secretary of State (so as to allow appropriate consultation and the development of a suitable evidence base in relation to any alternatives which are particularly relevant). Therefore, where an alternative is first put forward by a third

Ref	Deadline 4 submission	Applicant's comments
	<p>at either end of the HDD for stringing out ducting and temporary construction compounds. From north of Combe Holt, the cable route moves east, tracking the route of the already installed gas pipeline, before crossing the Chanctonbury Ring Road and heading north where it crosses the A283 using a trenchless crossing immediately south of Buncton Manor Farm. From this point the cable route heads north-east before picking up the Applicant's proposed cable route north of the Old School House.</p>	<p><i>party after an application has been made, the Secretary of State may place the onus on the person proposing the alternative to provide the evidence for its suitability as such and the Secretary of State should not necessarily expect the applicant to have assessed it"</i></p>
2.30.47	<p>We have not been able to identify any technical reasons why this route would not be feasible. Whilst it would require an HDD of approximately 270m to pass under the western part of Combe Holt, this is shorter than the HDDs proposed at Sullington Hill and to pass under the recreational fields in Washington to south of Roack Common Quarry. This alternative would increase the length of the cable route by approximately 700m, which equates to less than 2% of the overall onshore cable route length.</p>	<p>The Applicant considers there is no adequate evidence of the suitability (including feasibility) of this route, instead there are just assertions that it reduces minerals sterilisation. The Applicant considers that in reviewing this proposal, it could be considered "vague and immature" as described in paragraph 4.3.28 of NPS EN-1 (DESNZ, 2024) which would lead to the conclusion they are not important and relevant considerations in the Secretary of State's decision making.</p>
2.30.48	<p>Further, there is no reason why the route could not track the gas main as there is ample space available to maintain a standoff which would be acceptable to the gas asset owner. There is a potential pinch point caused by spatial constraints at Sawyers Copse and we have provided further information how this can be avoided in Section 8, with a number of alternatives available to the Applicant.</p>	<p>The assessment given in the Wiston Estate report also fails entirely to consider any aspects of the impacts arising (beyond brief commentary on minerals) from the Wiston Estate's proposals or consideration in terms of planning policy. The Applicant has considered both relevant minerals policy and provides demonstration of the relevant tests and compliance with other relevant planning policy in the Planning Statement [APP-036]. Section 5 of the Planning Statement [APP-036] sets out the benefits and adverse effects of the Proposed Development, including the significant effect on the soft sand Mineral Safeguarding Area (MSA) during construction, operation and maintenance but notes that this would be reversed on decommissioning of the Proposed Development. The Planning Statement [APP-036] concludes that the Applicant considers that the benefits of the Proposed Development outweigh these adverse impacts and overall and that there are no adverse impacts that cannot be mitigated or that outweigh the substantial benefits of Rampion 2. Wiston Estate's consideration of impacts of the Applicant's proposed cable route and the alternatives presented in Rampion 2 Cable Route Alternatives & Mineral Sterilisation [REP4-136] isolates impacts related to minerals as a standalone matter and does not apply the correct tests in consideration of wider policy.</p>
2.30.49	<p>The aerial view below shows the Modified Washington B Alternative Route in blue.</p>	<p>The Applicant has already acknowledged the matters referred to in reference 2.5.3 in the submission of the Applicant's Comments on Deadline 3 Submissions [REP4-070] under reference 2.28.11 and committed to updating this prior to close of Examination.</p>
		<p>Area 4 was considered by the Applicant within Deadline 4 Submission – 8.70 Applicant's response to Action points Arising from Issue Specific Hearing 2 and Compulsory Acquisition Hearing 1 Revision A [REP4-074].</p>
2.30.50	<p>The only area where minerals would be sterilised on the Estate by this route is where it would pass through the reserves located south of the A283, approximately 300m south of Buncton Manor Farm (area 4). As set out above, we have measured the area to be sterilised as approximately 10,000m² which, assuming a mineral depth of 40m and a density of 1.5t/m³, equates to 600,000 tonnes of sterilisation.</p>	<p>The operational chalk quarry referenced appears to be the Washington Chalk Quarry. The West Sussex Joint Minerals Local Plan and Waste Local Plan: Monitoring Report 2022/23 (West Sussex County Council and South Downs National Park Authority, 2023) (the latest monitoring plan available) identifies the quarry as an operational site. As an operational quarry, the use of the site as a construction compound would restrict its operational use during the construction phase which would be contrary to its approved planning permission and to Policy M9(a) of the JMLP. The Applicant notes that access to this site would be taken from the A24 onto the South Downs Way, a major public right of way (PRoW), which would need to be diverted and existing tracks upgraded. Additionally, the site is surrounded by Ancient Woodland, the required stand-off distances would drastically reduce the available area, making it unfeasible for the use as a construction compound.</p>
2.30.51	<p>Access appears to be readily available to this cable route from the junction south of the operational chalk quarry; this junction is used by heavy machinery required for pit operations. We have not seen any reason why this pit could not also be used as a</p>	

Ref	Deadline 4 submission	Applicant's comments
	construction compound to minimise the impacts of using the construction compound proposed by the Applicant further north on the Estate.	
2.30.52	Whilst much of this route follows parallel to the route of the gas pipeline through the southern part of the Estate, there is ample space available to maintain adequate distances between the cable route and the pipeline. Where the cable route needs to cross the pipeline, protective provisions can be agreed with the gas infrastructure owner to control the interface between the theirs and the Applicant's respective infrastructure and works.	
2.30.53	<p>6. The Wiston Estate Southern Route</p> <p>The Applicant's proposed route involves an HDD to or from land owned by the Estate at parcel 22/14 before crossing the A283 and then continuing east to land parcel 24/12 before heading north-east to land parcel 25/6. The vast majority of this route is through areas which will result in the sterilization of significant quantities of minerals such as the area of land immediately south of Rock Common Quarry as set out above.</p>	See responses to references 2.30.21 to 2.30.26 and 2.30.41.
2.30.54	We have assessed an alternative cable route which would involve 'HDDing' to the area located between the entrance to Tilley's Farm and Walnut Tree Cottage; this area is located outside of the Applicant's Order Limits, approximately 80m south of land parcel 22/17. From this point the cables would head south for approximately 500m before picking up the same route as proposed for the Modified Washington B Alternative Route. This route, referred to as the Wiston Estate Southern Route, is shown below by the pink line.	<p>The Wiston Estate Southern Route (as detailed within the plan) has not been previously proposed to the Applicant as a standalone proposal. The Applicant notes that as described, the route joins the Modified Washington B Alternative Route for which a response is provided under references 2.30.43 to 2.30.52. Further consideration is given to the new section of the proposals in reference 2.30.55.</p> <p>The Applicant also notes that the response to reference 2.30.43 in this table applies to this 'Wiston Estate Southern Route' with regards both the adequacy of Wiston Estate demonstrating a suitable alternative and failure to consider the necessary wider policy tests.</p> <p>In addition, there is no acknowledgement in the assessment of any potential impacts on Tilley's Farm which is a residential property and a listed building that would be close to the proposed alternate route.</p> <p>There is also no acknowledgement in the assessment that a substantial length of the alternate route runs immediately to the north of Chanctonbury Hill Site of Special Scientific Interest, nor any assessment of whether this might act as a constraint on this alternate route.</p>
		
2.30.55	To ensure the required HDD orientation can be achieved to avoid the minerals north of the A283 (i.e. south of Rock Common Quarry), it may be necessary for the Applicant to drill to or from the recreational fields north of Washington (i.e. the north-eastern corner of plot 22/7). We do not see any reason why this is not technically feasible as the HDD length would be less than 500m. It is worth noting the recreational fields are classified as special category land, hence there is a risk the Applicant would need special parliamentary procedure to secure the rights required for the Proposed Development in this area. Notwithstanding this, the alternative proposed would minimise sterilisation of the minerals south of Rock Common	The recreational fields noted here are the public open spaces Washington Recreation Ground and Jockeys Meadow. These are shown on Figure 17.4 in the Chapter 17: Socio-economics – Figures, Volume 3 of the Environmental Statement [APP-097]. The Wiston Estate proposals to create the trenchless crossing compound and associated access within the recreation ground, which is special category land and in public recreational use. To undertake the trenchless crossing drilling operations from this location would result in temporary closure of part of this area and a significant effect on recreation during construction. The Applicant notes that in contrast, the proposed onshore cable route avoids any impact to the Washington

Ref	Deadline 4 submission	Applicant's comments
	<p>Quarry and would be likely to reduce the sterilisation of minerals at the estate by approximately 6.4 million tonnes compared to the Applicant's proposed route.</p> <p>In the event the Applicant was unable to HDD to the area south of the A283 and had to HDD to the area south of Rock Common, the reduction in minerals sterilisation is likely to be 6 million tonnes as it would still sterilise the 400,000 tonnes in area 1.</p>	<p>Recreation Ground or Jockeys Meadow through the employment of a trenchless crossing underneath it (TC-16 in Appendix A – Crossing Schedule of the Outline Code of Construction Practice [REP4-043]) from the east of the A283 to the west of the A24.</p> <p>The Applicant notes that significant feedback received to date through consultation and through the examination process regarding the sensitivities of local communities to any disruption to the enjoyment of the recreational fields. Washington residents and visitors would be exposed by this requested alternative to high, otherwise avoidable impacts. For local communities to be disrupted to such an extent, is deemed an unacceptable consenting and compulsory acquisition risk for the project.</p> <p>See responses to references 2.30.21 to 2.30.26 and 2.30.41 in relation to the volumes of minerals stated here.</p> <p>The Assessment does not identify any reason the assumption set out at Paragraph 5.11.32 of the National Policy Statement (NPS) EN-1 (Department for Energy Security and Net Zero, 2024) should be set aside: <i>"The Secretary of State should not grant consent for development on existing open space, sports and recreational buildings and land unless an assessment has been undertaken either by the local authority or independently, which has shown the open space or the buildings and land to be surplus to requirements or the Secretary of State determines that the benefits of the project (including need), outweigh the potential loss of such facilities, taking into account any positive proposals made by the applicant to provide new, improved or compensatory land or facilities."</i></p> <p>The Applicant is not aware of any evidence before the examination that the recreational fields north of Washington are surplus to requirements so is not certain that such a proposal would pass this policy test.</p> <p>Furthermore, given the recreational ground's status as public open space and a registered village green, on a very basic level the Applicant's view is that an alternative that sits outside of the DCO process and that may require: <i>"need special parliamentary procedure to secure the rights required for the Proposed Development in this area"</i> cannot objectively be presented to the Examination as a credible alternative.</p>
2.30.56	<p>7. The Yellow Route</p> <p>The Yellow Route has previously been proposed to the Applicant by the Wiston Estate and involves installing the cables in the area immediately south of the A283 in the area from south of Rock Common Quarry for approximately a distance of 1 mile to the east.</p>	<p>The Applicant has considered previous iterations of the Wiston Estate's proposed 'Yellow Route' within the following submissions:</p> <ul style="list-style-type: none"> • Applicant's Response to Relevant Representations [REP1-017] under reference LI89.4 • Applicant's Response to Affected Parties' Written Representations [REP2-028] under reference 2.28.14. • Applicant's Comments on Deadline 3 Submissions [REP4-070] under references 2.28.14. <p>The Applicant has provided further commentary where possible on the Wiston Estate's description of the 'Yellow Route' under references 2.30.57 to 2.30.58 below. This iteration is slightly different as it proposes to avoid the block of woodland.</p>

Ref	Deadline 4 submission	Applicant's comments
		<p>The Applicant also notes that the response to reference 2.5.1 in this table applies to this 'Yellow Route' with regards both the adequacy of Wiston Estate demonstrating a suitable alternative and failure to consider the necessary wider policy tests.</p> <p>The Applicant also highlights that the "Rampion 2 Proposed Route" shown on the drawing here is not an accurate representation of the proposed route in the DCO Application. The route shown here appears to follow the southern boundary of the proposed DCO Order Limits, whereas the actual cable route would need to be further north to lie within the proposed DCO Order Limits corridor. It would therefore lie closer to the Yellow Route than suggested.</p>
2.30.57	We have assumed a buffer of 35m would be applied to mining operations from the road and that there is ample space to install the cables in this buffer zone.	It is unclear from Rampion 2 Cable Route Alternatives & Mineral Sterilisation [REP4-136] exactly how the 300,000 tonnes figure for Area 2a has been calculated, however the responses provided above in Section 2.4 show that there is substantial uncertainty over the calculations provided which raise queries on the figure. It is therefore not possible to provide an accurate comparison between the Proposed Development and the suggested alternatives.
2.30.58	This route would still result in sterilisation of 400,000 tonnes of minerals in areas 1, 1.8 million tonnes of minerals in area 3 and approximately 300,000 tonnes in the western part of area 2a and based on our assessment would result in the sterilisation of a total of approximately 2.5 million tonnes of minerals. However, we consider that it is likely that this would reduce the sterilisation of minerals at the estate by approximately 4.5 million tonnes compared to the Applicant's proposed route.	<p>Taking into account the actual Order Limits corridor and the Indicative Route Centreline proposed within the DCO Application, the Applicant's view is that there are some similarities between the Proposed Scheme and the alternate Yellow Route suggested. As is evident from a comparison of the Proposed Route identified on Sheets 22 and 23 of the Land Plans Onshore [PEPD-003] and the Yellow Route set out in the assessment, both routes seek to shadow the route of the A283 where possible. The Applicant has previously set out why it could not follow the Yellow Route exactly, within:</p> <ul style="list-style-type: none"> • Applicant's Response to Relevant Representations [REP1-017] under reference LI89.4 • Applicant's Response to Affected Parties' Written Representations [REP2-028] under reference 2.28.14. • Applicant's Comments on Deadline 3 Submissions [REP4-070] under references 2.28.14. <p>Subject to final pre-construction surveys, the Applicant can seek to position the onshore cable corridor as close as possible to the A283 within the proposed DCO Order Limits .</p>
2.30.59	<p>8. The Sawyers Copse Pinch Point</p> <p>In relation to the Modified Washington B Alternative Route and the Wiston Estate Southern Route, we understand the Applicant has discounted the ability to run the cables through the two respective areas of Sawyers Copse (categorised as Ancient Woodland) because of spatial constraints. We are aware the gas pipeline already runs in a north to south direction between the two areas of Sawyers Copse.</p>	
2.30.60	If the applicant were to cross the gas pipeline with the cables and run them in a north south direction to the east of the gas pipeline, there is a corridor available for installation. With regards to buffer zone recommendations the UK's Government Guidance 'Ancient woodland, ancient trees and veteran trees: advice for making planning decisions' 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). We are	The Applicant has committed to an Ancient Woodland buffer of 25m in response to stakeholder consultation and in order to minimise the risks to this priority habitat. The Applicant does not agree to watering down this commitment. The representation highlights that the Affected Party is also aware that there is insufficient space to accommodate the 40m construction corridor in this location. The Applicant notes that there is not even sufficient space to accommodate the 15 metre buffer alongside the works at this pinch-point.

Ref Deadline 4 submission

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also aware of the protective provisions in relation to the pipeline apply from the point at which works are taking place within 15m of the gas assets. Applying the advised buffer to the Ancient Woodland and the gas pipeline leaves a corridor of 30m within which to install the cables. Whilst this is narrower than the 40m construction corridor, based on our knowledge and experience, it will still be possible to install the cables in this area by making minor modifications to the installation process. This route is shown by the pink line below. The approximate location of the gas pipeline is shown in white and the approximate outline of the ancient woodland is shown in green in the aerial view titled 'Sawyers Copse – Option 1' below.

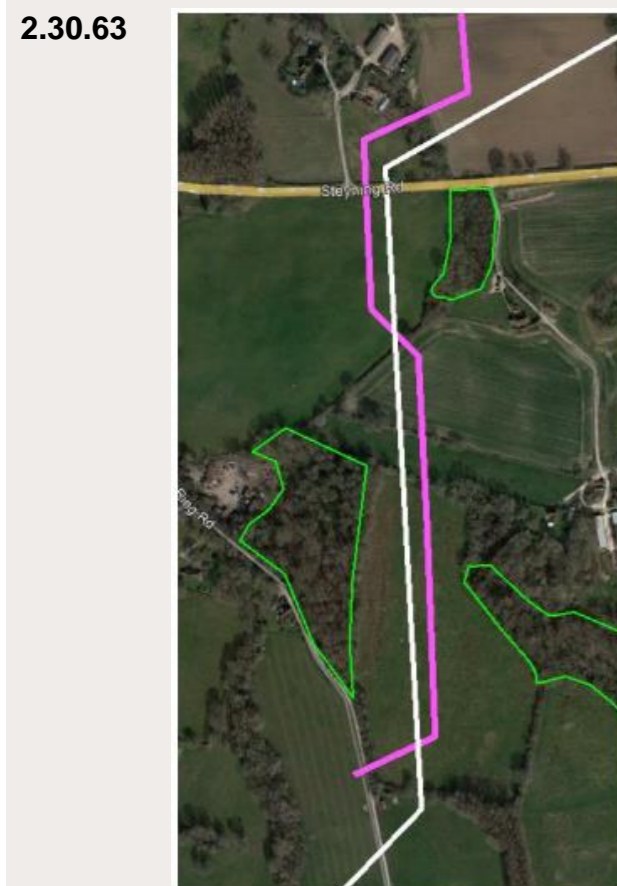
Additionally, the actual position of the gas pipeline would need to be confirmed via surveys, as it is often the case that the recorded position for services is not accurate. Given these spatial constraints and prevailing uncertainty around the ability to determine a construction design that would be acceptable to the gas pipeline operator, the Applicant has concluded this would present a high risk to deliverability of the scheme.

In relation to construction in proximity to the gas pipeline, the Applicant refers to the response given in **Table 2-31** in answer to **reference 2.31.1**.

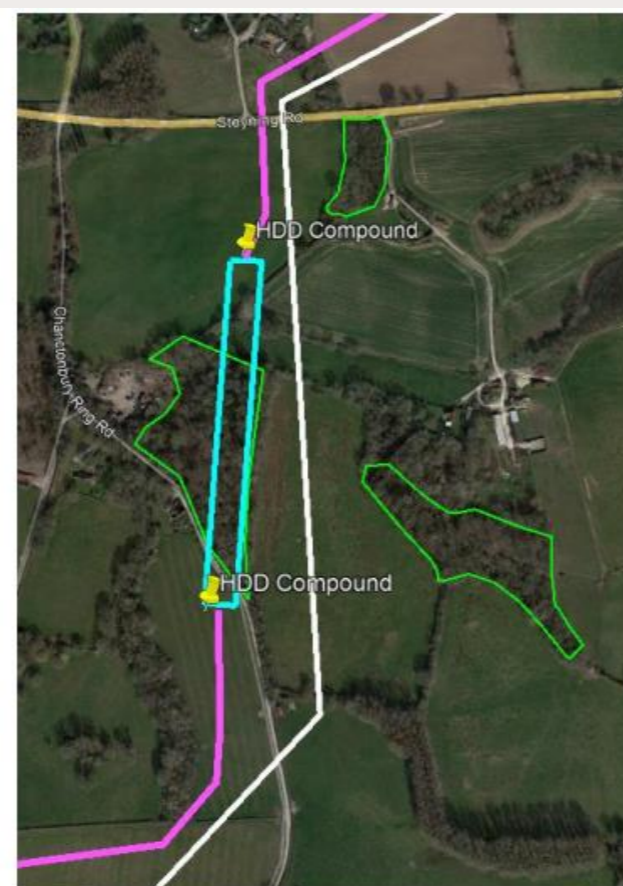
2.30.61 The other alternative is to carry out an HDD from south of Chanctonbury Ring Road to the area north of Sawyers Copse to avoid the potential pinch point location altogether. This is shown in the aerial view titled Sawyers Copse – Option 2 below.

In terms of the newly suggested alternative of utilising a trenchless crossing under Sawyers Copse, while this may be an improvement on the open cut trenching version discussed above, this still introduces a new interaction with ancient woodland whereas the selected route avoids ancient woodland altogether. In accordance with the mitigation hierarchy, avoidance is always the first choice of the Applicant there is no exceptional justification here for deviating from this principle.

2.30.62 Other alternatives which constitute a combination of both option 1 & 2 above could also be utilised (i.e. HDD a number of circuits and direct install a number of circuits).



Sawyers Copse - Option 1



Sawyers Copse - Option 2

The works for this alternative would also be within 50m of the Chanctonbury Hill Site of Special Scientific Interest (SSSI), although this is likely to be managed effectively through appropriate mitigation (dust suppression etc.). As well as passing closer to the SSSI the alternative crosses more hedgerows and tree lines than the selected route.

The Applicant notes that the proposed route "Option 2" would likely require additional woodland loss in the south, where the route turns from east to north to keep the required stand-off distances to the pipeline.

2.30.64 9. Conclusion
A considerable length of the Onshore Cable Route for the Proposed Development passes through the Wiston Estate and, our high level review estimates that this is likely to sterilise

The Applicant's comments provided throughout this document provide detailed responses to the comments made within Rampion 2 Cable Route Alternatives & Mineral Sterilisation [REP4-136] on both minerals sterilisation and the alternatives suggested. In summary, the Applicant

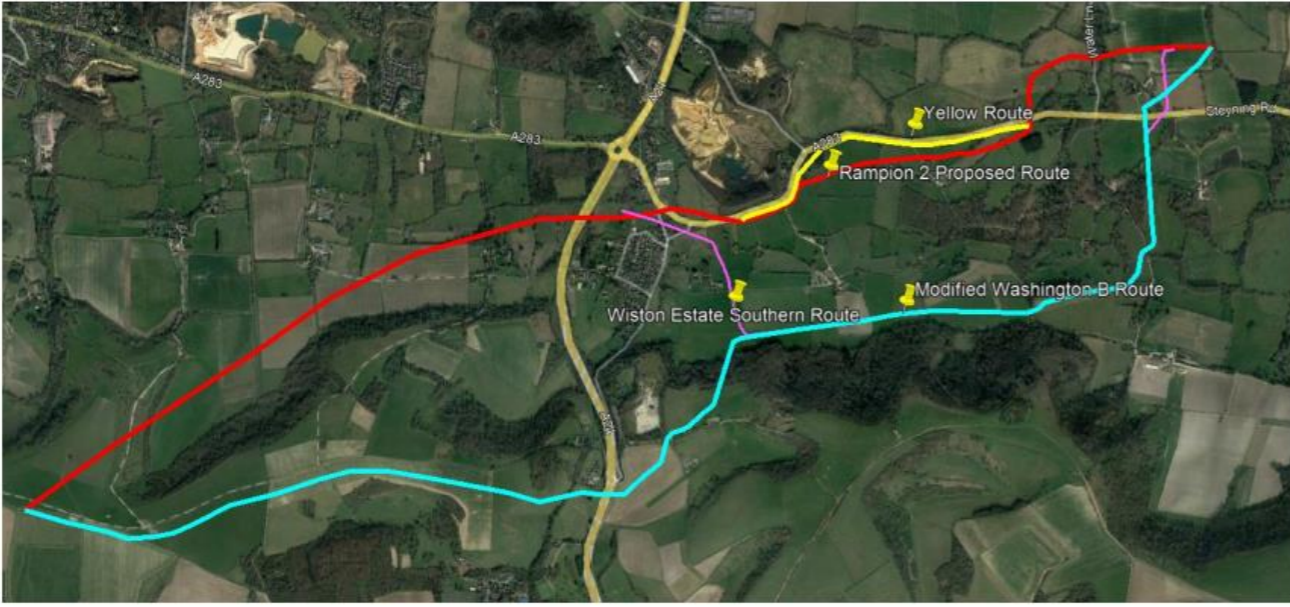
Ref	Deadline 4 submission	Applicant's comments
	approximately 7 million tonnes of soft sand mineral, as well as significantly impacting ongoing and future operations for the Estate and its tenants.	
2.30.65	We have assessed three alternative cable routes which significantly reduce the amount of mineral sterilisation the Proposed Development will cause.	remains of the view that the minerals calculations rely heavily on assumptions and caveats, and are therefore only suitable for determining EIA significance. The evidence used within Rampion 2 Cable Route Alternatives & Mineral Sterilisation [REP4-136] is not considered to be robust and it raises further questions around the minerals resource which may be affected.
2.30.66	For the avoidance of doubt, the Applicant's proposed cable route is shown in red below.	As such, it is the Applicant's view that the minerals calculations provided within Rampion 2 Cable Route Alternatives & Mineral Sterilisation [REP4-136] cannot be considered reliable for the purposes of comparisons between the Proposed Development and the suggested alternatives, and therefore minerals cannot be a determining factor in the consideration of alternatives.
2.30.67	The modified Washington B alternative, shown in blue below, is likely to reduce the amount of mineral sterilisation from approximately 7 million tonnes to 600,000 tonnes, a reduction of 6.4 million tonnes.	The Applicant has outlined its consideration of the Wiston Estate proposed alternatives and identified that in each alternative presented in this report that there is inadequate information to demonstrate suitability of their proposals and failed to consider the wider policy implications relevant to the consideration of the Proposed Development.
2.30.68	The Wiston Estate Southern alternative, shown in blue below, is likely to reduce the amount of mineral sterilisation from approximately 7 million tonnes to 600,000 tonnes, a reduction of 6.4 million tonnes.	
2.30.69	The Yellow Route alternative, shown in yellow below, is likely to reduce the amount of mineral sterilisation from approximately 7 million tonnes to 2.5 million tonnes, a reduction of 4.5 million tonnes.	Significant constraints, such as the presence of Listed Buildings, a Scheduled Monument, potential impacts on the Chanctonbury Hill Site of Special Scientific Interest and the possible need for a special parliamentary procedure to secure the rights required for the Proposed Development, have not be considered for the proposed alternatives, and in fact the available evidence does not support the assessment's characterisation of these alternatives as ' <i>likely to be technically deliverable</i> '.
2.30.70		To submit new routes/iterations of routes during the examination without any evidence as to their suitability goes against the thrust of the guidance in National Policy Statement (NPS) EN-1.
2.30.71	We consider all three alternative routes are likely to be technically deliverable and will significantly reduce mineral sterilisation and impacts on the operations of the Estate.	The Applicant's position therefore remains that the Proposed Development provides a route which is viable for delivery, which seeks to minimise minerals sterilisation due to the design of its route and can mitigate against permanent minerals sterilisation by the working practices proposed. It therefore accords with relevant national and local planning policy.

Table 2-31 Applicant's comments to Wiston Estate Deadline 4 submission #2 [REP4-135]

Ref	Deadline 4 submission	Applicant's comments
2.31.1	1. The first part of this document provides a summary of the representations made on behalf of the Wiston Estate at CAH1 on Friday 17 May and 21 May 2024 by [REDACTED], of counsel. Where appropriate these also expand upon what was summarised at the hearing. The second part of this document summarises additional representations which the Wiston Estate confirmed would be provided as part of its Deadline 4 submission.	See response to Rampion 2 Cable Route Alternatives & Mineral Sterilisation [REP4-136] .
2.31.2	2. The following appendices accompany these submissions: Appendix 1 – Court of Appeal Judgment - R (oao FCC Environment (UK) Ltd) v SSECC [2015] EWCA Civ 55 Appendix 2 – The Alternatives Chapter for the Environmental Statement for Rampion 1 Appendix 3 – Viticulture Site Suitability Analysis by Knight Frank	
2.31.3	3. As foreshadowed at the hearing, the Wiston Estate will also be submitting a report on mineral sterilisation and alternative routes from Avison Young. Due the illness of one of its authors this report has been delayed and will be submitted to the ExA as soon as possible.	
2.31.4	4. It was striking that despite the Applicant being given an opportunity to respond to the points made by the Wiston Estate at the hearing, the Applicant chose a very limited number of points to reply on. We note below the points on which the Applicant did not respond.	The Applicant was not given the opportunity to respond to every point made at the CAH1, nor is that the purpose of a CAH given that an examination is a hybrid written and hearing process. Any lack of comment at the CAH should not be taken as any admission by the Applicant of the matters raised. The Applicant has responded to many of the points in writing previously and at Deadline 4. Further responses are provided below.
2.31.5	5. Roughly 10% of the cable's length passes through Wiston Estate (work shown on sheets 22, 32, 24 and 25 of the Onshore Works Plans PEPD-005).	Whilst the Applicant notes that roughly 10% of the cable length passes through the Wiston Estate, this is a small proportion of the Estate's total landholding which extends to circa 6,000 acres. The Applicant submitted a map at Deadline 4 (Appendix K within Applicant's Comments on Deadline 3 Submissions [REP4-070]) identifying a large proportion of the boundary of the Estate in blue and indicating the route of the cable close to the A283/ Steyning Road which bisects the Estate (east to west). The Applicant has submitted a secondary map at Deadline 5 (shown at Appendix R) with further zoomed out aperture to indicate the full extent of the Estate. As previously outlined within the Applicant's response to Affected Parties' Written Representations [REP2-028] , the Rampion 2 project proposals indicate Works areas (No.9, No.10, No.12, No.13 and No.14) extending to a maximum area that impacts 1.80% of the entire area of the Estate (excluding parkland, woodland, quarries and pond areas).
2.31.6	<i>Extent of the Land Take</i> 6. On Friday 17 May 2024 the Wiston Estate made representations concerning the fact that the Applicant had not justified the extent of the land take proposed. In particular, the width of areas proposed to be subject to compulsory acquisition ('CA') had not been justified.	The Applicant has no further comments. The Applicant has explained the need for the land rights over the Wiston Estate including the requirement for an element of flexibility within the Order Limits. Beyond mere assertion, the Land Interest does not identify any part of the Order Land affecting its ownership which is not required for the Proposed Development.
2.31.7	7. Ultimately the Applicant has failed to conduct sufficient surveys to enable the Applicant to narrow down the land take at this stage and this has led it to include much more land in the CA of the order than is in fact required. This goes above and beyond the flexibility which this type of project would usually be expected to require.	The degree of flexibility sought and the level of detailed surveys and design work undertaken by the Applicant is entirely consistent with the approach of promoters in other consented linear infrastructure projects. The Applicant provided details of a selection of these in its response to Action 6 from the CAH in Applicant's Response to Action Points Arising from Issue Specific Hearing 2 and Compulsory Acquisition Hearing 1 [REP4-074] .

Ref	Deadline 4 submission	Applicant's comments
2.31.8	8. In responding to a question from the ExA, the Applicant relied upon requirement 23(2)(f) of the Draft DCO in order to ensure that excessive land was not subject to CA. However, this simply provides that the method statement must 'confirm the cable corridor location and its width through the relevant stage...'. This does not provide for the width of the construction area for the cable. Nor does it require the Applicant to minimise land take.	<p>The Applicant made a change to requirement 23(2)(f) at Deadline 4 Draft Development Consent Order [REP4-004] to include reference to the cable construction corridor location and width.</p> <p>As explained in the Applicant's response to Action 6 Applicant's Response to Action Points Arising from Issue Specific Hearing 2 and Compulsory Acquisition Hearing 1 [REP4-074] the Outline Construction Method Statement [APP-255] has been amended at Deadline 5 to include a commitment to minimise land take.</p>
2.31.9	9. The Wiston Estate shares concerns raised by the ExA regarding the lack of provision in the DCO for the return of land once the cable has been constructed.	<p>Please see the Applicant's response to Action 6 in Applicant's Response to Action Points Arising from Issue Specific Hearing 2 and Compulsory Acquisition Hearing 1 [REP4-074] and the updated text in the Deadline 5 version of the Outline Construction Method Statement [APP-255] which provides commitments regarding the release of permanent rights which are no longer required for the Proposed Development.</p>
2.31.10	<p><i>Minerals and Sterilisation</i></p> <p>10. A few short contextual points were made on law and policy.</p>	<p>The Applicant acknowledges that in principle it is open to the Secretary of State to find that there is an urgent need for development in compliance with the NPS but then find that the section 122 compelling case in the public interest test is not met. The decision in R (oao FCC Environment (UK) Ltd) v SSECC [2015] EWCA Civ 55 ("the FCC case") is not however authority for the Land Interest's proposition that the 'existence of a less harmful alternative may mean that there is no compelling case in the public interest'.</p>
2.31.11	11. First, the test for compulsory acquisition ('CA') under s122 is not the same as s104 PA 2008. Therefore, the Secretary of State could find compliance with the NPS but nonetheless that there is no compelling case in the public interest. Equally the Secretary of State may find that the existence of a less harmful alternative is insufficient to defeat the application under s104 but the existence of a less harmful alternative may mean there is no compelling case in the public interest – R (oao FCC Environment (UK) Ltd) v SSECC [2015] EWCA Civ 55 paras 9-11) (Appendix 1).	<p>The examples given in paragraph 11 of the judgment in the FCC case as circumstances where the decision-maker could conclude that there was no compelling case for compulsory acquisition despite an NPS having an established an urgent need for development were:</p>
2.31.12	12. Second, the Applicant must demonstrate that the Applicant is not acquiring more land than is reasonably required for the purposes of the development (Procedures for the compulsory acquisition of land (Sept 2013) ('CA Guidance') para 11).	<ol style="list-style-type: none"> i. The land proposed to be acquired compulsorily may, on proper analysis, be found to be excessive because the development proposals can be constructed without needing that land to be acquired (in which case, the section 122(2) test would also not be met); ii. The acquisition of a right over the land, rather than its acquisition, might suffice; iii. The land may be necessary but, during the course of the Panel's consideration of the application, the owner may agree to sell it willingly rather than by compulsion (a common scenario in compulsory purchase inquiries); and iv. The example of an NPS which did not require consideration of alternative sites for the purpose of deciding whether to grant a development consent for a particular kind of infrastructure development, but where the existence of an alternative site or sites would be relevant for the purpose of deciding whether there was a compelling case in the public interest for compulsory acquisition.
2.31.13	13. Therefore the short points are that if there are materially less harmful alternatives available to the Applicant then there will be no compelling case in the public interest for CA. Further if there are alternatives available which involve less extensive and less harmful impacts upon a person's land there will be no compelling case in the public interest.	<p>In conclusion it was established that the fact an NPS establishes an urgent need, does not mean the test in s.122(3) is automatically and necessarily met. It may be possible to meet the need without the use of requested powers of compulsory acquisition.</p>
2.31.14	<p>14. The Applicant argued that alternatives are only relevant in the context of CA if they fall within paragraph 8 of the guidance which states:</p> <p>'The applicant should be able to demonstrate to the satisfaction of the Secretary of State that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored. The applicant will also need to demonstrate that the proposed interference with the rights of those with an interest in the land is for a legitimate purpose, and that it is necessary and proportionate.' (paragraph 8)</p>	<p>The Applicant submits that none of those scenarios apply to the draft DCO:</p> <ol style="list-style-type: none"> i) The land proposed to be acquired is not excessive. General comments have been made by the Land Interest and other Affected Parties about the width of the Order Land or particular locations where there is greater flexibility. Whilst the Applicant intends to
2.31.15	15. The first point is that the guidance is not exhaustive of when alternatives will be a relevant material consideration. The statutory test remains that there must be a 'compelling case in the public interest'. Clearly, if there is materially less harmful alternative available to the Applicant then this may well be sufficient reason to find that there is no compelling case in the public interest.	

Ref	Deadline 4 submission	Applicant's comments
2.31.16	<p>16. Second, and in any event, paragraph 8 requires 'all reasonable alternatives to compulsory acquisition to be explored'. It also requires that the proposed interference is 'necessary and proportionate'. Clearly if there is a materially less harmful alternative available to the Applicant then the compulsory acquisition will not be necessary or proportionate.</p>	<p>submit a change request to remove a number of small parcels of land from the Order Limits, neither the Land Interest, nor any other party has substantiated an argument that any part of the Order Land is not required for the purposes in s122(2) of the Planning Act 2008;</p> <ul style="list-style-type: none"> ii) The Applicant's land acquisition strategy is proportionate and principally seeks the acquisition of rights rather than land, as is the case with the Land Interest, from whom only new rights and restrictive covenants are sought. Whilst the Applicant intends to submit a change request to downgrade the type of land rights sought over a small number of land parcels, neither the Land Interest nor any other Affected Party has identified any part of the Order Land for which a lesser type of acquisition would suffice; iii) Whilst voluntary negotiations have been and are still being pursued with interested parties, the Land Interest is not currently willing to conclude a binding agreement as an alternative to compulsory acquisition; and iv) The Applicant has given extensive consideration to alternative options and routes, including those proposed by the Land Interest, and has provided sound reasons for rejecting them. <p>The Draft Development Consent Order [REP4-004] does not therefore have any parallels with the scenarios envisaged in the FCC case. Moreover, it is not possible to meet the need for the Proposed Development without the requested powers of compulsory acquisition. The Applicant submits that this is not a situation where the Secretary of State can reasonably conclude that there is no compelling case for compulsory acquisition despite an NPS having an established an urgent need for development.</p> <p>To the extent that the Land Interest contends that where a less harmful alternative exists it should be adopted, this proposition has been rejected by the Courts in the context of a number of cases concerning compulsory purchase orders where objectors proposed alternatives : for example, the Court of Appeal in R (on the application of Clays Lane Housing Co-operative Ltd) v Housing Corp [2005] 1 W.L.R. 2229 in which Kay L.J. held that 'the appropriate test of proportionality requires a balancing exercise and a decision which is justified on the basis of a compelling case in the public interest and as being reasonably necessary but not obligatorily the least intrusive of Convention rights.' Further, that 'if a test of strict necessity is applied to identify and compel the 'least intrusive' alternative, decisions which were second best or worse. . . would become mandatory.' In Pascoe v First Secretary of State [2006] 4 All E.R. 1240, Forbes J. rejected a submission that the means of regeneration must be the least intrusive of the claimant's rights. "Turning to the second point made by Mr Maurici on this aspect of the matter, I also agree that, even if a practical and less intrusive alternative means of achieving the required regeneration had been available, the rejection of such an alternative in favour of the confirmation of the order does not, of itself, mean that there is any lack of proportionality. The case law cited above and, in particular, James's case and the Clays Lane Housing case [2005] 1 WLR 2229 make it clear that proportionality in this context does not compel the decision-maker to show that he has adopted the "least intrusive" alternative. As it seems to me, the views expressed by the Court of Appeal in the Clays Lane Housing case (see the passage from para 25 of the judgment, quoted above) are very apposite in relation to CPOs aimed at delivering regeneration schemes such as the present. I am therefore satisfied that the balancing exercise carried out by the inspector and the Secretary of State in this case was sufficient to meet the requirement of proportionality." A similar conclusion was reached in Belfields Ltd v Secretary of State for Communities and Local Government [2008] J.P.L. 954.</p>

Ref	Deadline 4 submission	Applicant's comments
2.31.17	<p>17. The importance of alternatives in the context of the Wiston Estate is also underscored by Minerals Policy. EN1 para 5.11.19 states:</p> <p>‘Applicants should safeguard any mineral resources on the proposed site as far as possible, taking into account the long-term potential of the land use after any future decommissioning has taken place.’</p>	<p>The Land Interest may not be happy with the outcome of the Applicant’s consideration of the alternatives proposed by the Land Interest, but it cannot be rationally concluded that the Applicant has failed to give sufficient consideration to those alternatives. That includes the southern route despite this only being proposed by the Land Interest for the first time circa 4 months into the examination. Nor can it be reasonably concluded that the Applicant has failed to provide clear reasons for not taking alternatives forward. The Applicant’s reasons for refusal of the Land Interest’s alternatives have not been challenged in any meaningful way other than by mere assertion.</p> <p>Paragraph 8 of the CA Guidance 2013 requires applicants to demonstrate that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored. The Applicant submits that it has done so and that the compelling case in the public interest is met.</p>
2.31.18	<p>18. Clearly, if there are alternatives which either (a) avoid the sterilization of materials or (b) sterilize less mineral than the proposed scheme then the Applicant will not have safeguarded mineral resources ‘as far as possible’. The Applicant did not disagree with this at the hearing.</p>	<p>The Applicant does not interpret this paragraph as requiring applicants to assess all mineral reserves and identify alternative routes that either avoid altogether or minimise any mineral sterilisation.</p> <p>The requirement of this paragraph that Applicants ‘<i>safeguard any mineral resources</i>’ as far as possible is limited to a specified location: ‘<i>on the proposed site</i>’ and even then is within the context of taking into account the ‘<i>long-term potential of the land use after any future decommissioning has taken place.</i>’</p> <p>The Applicant’s view is that a requirement for renewable energy infrastructure to be located so as to avoid the sterilisation of materials or sterilise less mineral than it would have been set out as an explicit requirement of the policy. It would also not have been limited to ‘<i>mineral resources on the proposed site</i>’ as the impacts of indirect sterilisation (on adjoining sites or by severing otherwise workable mineral reserves) would have to be considered (a point made on behalf of Wiston Estates at 2.1.25, below).</p> <p>In support of this interpretation of Para 5.10.9 of the NPS-EN1 2011³, the Applicant cites Paragraph 4.4.1 of the same document which confirms that from a policy perspective: ‘<i>this NPS does not contain any general requirement to consider alternatives or to establish whether the proposed project represents the best option.</i>’</p> <p>Paragraph 4.4.2 does identify that relevant energy NPSs may impose a policy requirement to consider alternative with the clarification: ‘<i>as this NPS does in Sections 5.3, 5.7 and 5.9</i>’. It is notable that in all these Sections the need to consider alternative is explicitly stated:</p> <ul style="list-style-type: none"> • 5.3 (Biodiversity and geological conservation): ‘<i>As a general principle, and subject to the specific policies below, development should aim to avoid significant harm to biodiversity and geological conservation interests, including through mitigation and</i>

³ Section 1.6 of NPS-EN1 2023 confirms that for any application accepted for examination before designation of the 2023 amendments the 2011 suite of NPSs ‘should have effect in accordance with the terms of those NPS’. The Rule 6 Letter issued by the Examining Authority in December 2023 confirms in Annex B that this provision applies to the Proposed Scheme. The NPS-EN1 2011 contains the same text (at Para 5.10.9) as NPS-EN1 2023 Para 5.11.19

Ref	Deadline 4 submission	Applicant's comments
2.31.19	19. EN1 para 5.11.28 states: 'Where a proposed development has an impact upon a Mineral Safeguarding Area (MSA), the Secretary of State should ensure that appropriate mitigation measures have been put in place to safeguard mineral resources.'	<p><i>consideration of reasonable alternatives (as set out in Section 4.4 above); where significant harm cannot be avoided, then appropriate compensation measures should be sought.</i> (Paragraph 5.3.7)</p> <ul style="list-style-type: none"> 5.7 (The Sequential Test for Flood Risk): '<i>Consideration of alternative sites should take account of the policy on alternatives set out in Section 4.4 above</i>' (Paragraph 5.7.13); and 5.9 (in relation to Development proposed within nationally designated landscapes): '<i>the cost of, and scope for, developing elsewhere outside the designated area or meeting the need for it in some other way, taking account of the policy on alternatives set out in Section 4.4</i>' (Paragraph 5.9.10).
2.31.20	20. Again, if there are routes which involve the sterilization of less mineral within a mineral safeguarding area then the Applicant will not have mitigated the impact upon mineral resources. Equally, the Applicant must demonstrate that it has put in place measures to further mitigate such as prior extraction.	<p>To the extent that EN1 2023 Para 5.11.28 is an important and relevant consideration of the Proposed Scheme the Applicant notes that the requirement is for '<i>mitigation measures</i>' rather than a starting point of avoidance of mineral sterilisation.</p> <p>In relation to paragraph 5.11.28 of NPS EN-1, the Applicant made a number of submissions at Deadline 4 to clarify the approach to mitigation, principally within the Deadline 4 Submission – 8.66 Applicant's Comments on Deadline 3 Submissions [REP4-070]. In this document, section 2.1.74 – 2.1.80 provides a response to West Sussex County Council in relation to mitigation relating to minerals. The Applicant considers that the mitigation proposed provides appropriate measures within the Minerals Safeguarding Area.</p> <p>The minerals assessment provided adheres to this policy by considering both the safeguarding of minerals resources that have been identified and considering the long-term potential of the land. The mitigation measures referred to above would allow the minerals encountered (either within or outside of the Minerals Safeguarding Area) to remain in situ and therefore they would become available for extraction again following the end of the operational phase of the Proposed Development.</p> <p>It is also relevant that the minerals calculations undertaken by both the Applicant and by Wiston Estates rely on assumptions and caveats, as there is very limited ground investigation data available to inform these calculations and the other available data provided by Wiston Estates or from the public domain provide inconsistent results. As such, it is not possible at this point in time to confirm whether any alternative route has a lesser or greater impact on minerals sterilisation.</p>
2.31.21	21. There is also local Policy M9 of the Joint Minerals Local Plan and NPPF para 216.	Policy M9 of the Joint Minerals Local Plan (JMLP) (WSCC and SDNPA, 2021) relates to the safeguarding of minerals within the Minerals Safeguarding Area identified in the JMLP. Part b of Policy M9 sets out the mineral reserves, including soft sand, will be safeguarded against sterilisation as follows:
2.31.22	22. The proposed route crosses a soft-sand minerals safeguarding area ('MSA') in the vicinity of the Wiston Estate.	<p><i>'Proposals for non-mineral development within the Minerals Safeguarded Areas (as shown on maps in Appendix E) will not be permitted unless: ...</i></p> <p><i>(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.'</i></p>
2.31.23	23. Chapter 24 of the ES, APP-065 'Ground Conditions', acknowledges this. It describes the cable has having 'significant negative effects' in relation to the MSA (para.24.11.6). However, it is not only the safeguarding area where minerals are present, there are also known minerals present in other areas outside of the MSA. This will be addressed in the report by Avison Young which is to be submitted by the Wiston Estate as soon as possible. The Wiston Estate made the Applicant aware of the existence of minerals outside of the	

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MSA as early as 2021. It is therefore surprising that no analysis of this has taken place by the Appellant.

2.31.24 24. West Sussex County Council ('WSCC') D3 Submission [REP3-072] at para 2.75 makes the point that soft sand is a scarce and heavily constrained material and that there are limited reserves permitted at this time.

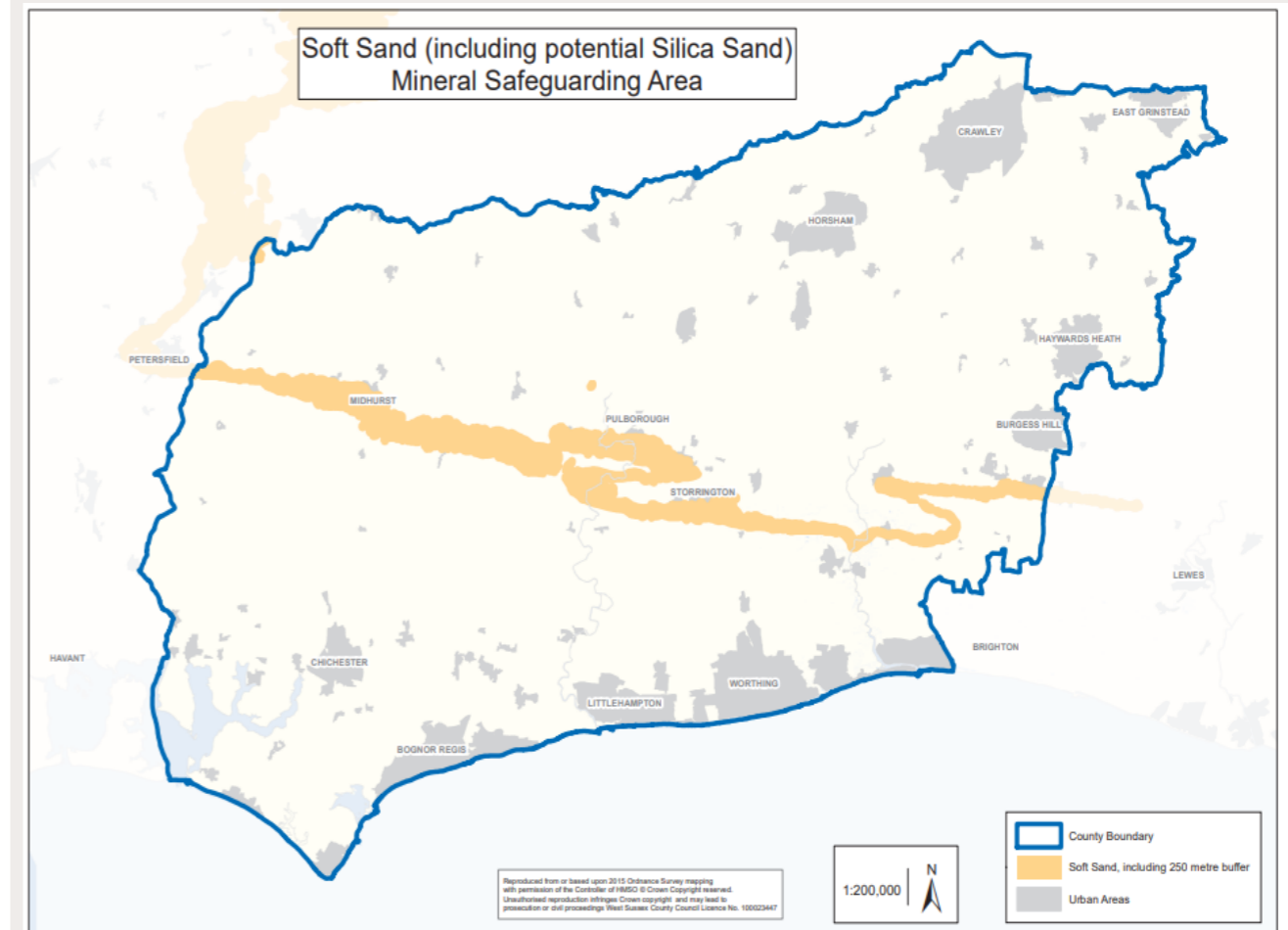
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The Applicant's view is that given the critical national priority for the provision of nationally significant low carbon infrastructure, there is an overriding need for the proposed development, consistent with the requirements of Policy M9.

Clearly it would not be possible for any offshore scheme that connects to the National Grid at Bolney Substation to avoid the Mineral Safeguarding Area.

The reasons why a connection at Ninfield were discounted are set out in detail at 2.1.34, below.

As is evident from the extract from the West Sussex Joint Mineral Local Plan (WSCC and SDNPA, 2021), the Mineral Safeguarding Area for Soft Sand runs continuously from the west side of Sussex to the East



NPPF paragraph 216 states that planning policies should safeguard minerals resources by the use of minerals safeguarding areas to ensure that they are kept safeguarded from unnecessary sterilisation by non-mineral development and within areas of known minerals resources. Paragraph 216 also states that these safeguarding policies should not create a presumption that the resources being safeguarded will be worked.

Although Wiston Estates have previously provided submissions regarding their minerals interests, none of these submission has been backed-up by any evidence of the minerals

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		<p>quality or quantity, nor do they relate to any minerals (with the exception of those within Rock Common Quarry) for which planning allocations or planning permissions exist. The volume, quality and whether the locations could be suitable for extraction in the future are therefore unknown. The Applicant's minerals assessment therefore focussed on the Minerals Safeguarding Area as this is evidenced by policy, which in turn is evidenced from BGS geology data.</p>
2.31.25	<p>25. One of the other points made by WSCC is that it is not only sterilization of the area within the line of the cable that needs to be considered but also the potential for severance of areas around the cable (see p24 of ES chapter 24 'Ground Conditions' [APP-065]).</p>	<p>Further clarity on the calculation and severance considerations made by the Applicant has been provided within the Applicant's Response to West Sussex County Council Deadline 1 Submissions [REP2-020], Applicant's Response to Affected Parties' Written Representations [REP2-028] and Appendix K of the Deadline 4 Submission – 8.66 Applicant's Comments on Deadline 3 Submissions [REP4-070]. (Please note that Appendix K of REP4-070 provides a plan which was accidentally omitted from the REP2-028 submission).</p>
2.31.26	<p>26. The Applicant claims, at chapter 24 of the ES APP-065 'Ground Conditions', that the cable corridor will interact with approximately 8.2ha of land within the Minerals Safeguarding Area (24.9.43 on page 88). It goes on to discount this as being less than 0.1% of the total MSA. It has calculated this as being a worst-case scenario of 1,160,000m cubed of sand (24.9.47).</p>	<p>It is also relevant to note that historic data from Tarmac provided in Rampion 2 Cable Route Alternatives & Mineral Sterilisation [REP4-136] also suggests that severance would be an issue within some of the land in question, as Tarmac considered extraction could only take place with a diversion of the A283 (i.e. the sand was currently under severance and therefore already sterilised from extraction by the presence of the A283).</p>
2.31.27	<p>27. The Applicant has provided very little justification for its calculation, it has not even provided <u>any plans</u> for the areas of mineral which it says it has counted towards its calculation – the Applicant is therefore requested to provide these.</p>	
2.31.28	<p>28. In any event, it is clear to the Wiston Estate that the Applicant has grossly underestimated the impact of the cable because it has failed to take account of minerals outside of the MSA.</p>	<p>The Applicant has responded to the separate report on minerals provided (under Rampion 2 Cable Route Alternatives & Mineral Sterilisation [REP4-136]) elsewhere within this document.</p>
2.31.29	<p>29. The Estate will be presenting the ExA with expert evidence with a reasoned and justified estimate of the mineral sterilization impact of the proposed scheme. This will demonstrate that the figure of 1 million cubic metres is a significant underestimate.</p>	
2.31.30	<p>30. It can also be noted that the Applicant is not committing to prior extraction to mitigate the impact. This is wholly contrary to relevant policy. No good reason has been given for this approach. The Applicant did not take the opportunity to explain this at the hearing.</p>	<p>The Applicant made a number of submissions at Deadline 4 to clarify why prior extraction is not viable, principally within the Deadline 4 Submission – 8.66 Applicant's Comments on Deadline 3 Submissions [REP4-070], section 2.1.74 – 2.1.80.</p>
2.31.31	<p>31. Whatever the estimate of minerals which will be sterilized – whether it's 1 million cubic metres or several times that (as will be set out in the Avison Young report), the point is that policy (EN1, the NPPF and Local Policy) requires the Applicant to safeguard minerals as far as possible. The Applicant did not disagree with this at the hearing.</p>	<p>As noted with the response to 2.31.17-2.31.20 above, and in the Applicant's previous submissions through the application and examination, there is very little geological data available to make detailed calculations of the minerals which may be affected. Due to this situation, it is impossible to know what the exact effect on minerals any alternative route would have as every alternative suggested is required to pass through the Minerals Safeguarding Areas. Therefore while minerals were considered, they were not considered to be a differentiator within the assessment of alternatives.</p>
2.31.32	<p>32. Despite this, nowhere does the alternatives chapter of the ES [APP-044] consider minerals safeguarding as a material factor in decisions over the route (wholly contrary to the clear policy position which requires applicants to avoid sterilizing minerals). The Applicant did not dispute this at the hearing.</p>	<p>The consideration of alternatives has therefore focussed on other environmental and construction matters as detailed within the Environmental Statement - Volume 2 Chapter 3 Alternatives [APP-044].</p>
2.31.33	<p>33. There are alternative routes available to the Applicant which would either (a) avoid the mineral resource altogether or (b) cause much less of the resource to be sterilized. The Applicant has failed to give adequate reasons why these cannot be pursued.</p>	
2.31.34	<p>34. There is at least one major alternative which would avoid the sterilization of the mineral resource and would also be materially less harmful to the national park in particular - the</p>	<p>The Applicant has responded to these matters with respect the length of the onshore cable versus the offshore cable and related cost in response to the Action Point 11 from the</p>

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	<p>major route alternative which goes to Ninfield rather than Bolney. [REP3-144] p5 shows a plan of that major route alternative.</p> <p>a. The onshore cable would be just c6km vs c38km; b. It does not cross the soft sand MSA; and c. It does not cross the national park at all.</p>	<p>compulsory acquisition hearing [REP4-074] and with regards to the connection at Bolney under Action Point 12. There is no reasonable alternative that avoids the Minerals Safeguarding Area.</p> <p>Further technical considerations with regards to the rejection of a Ninfield connection are detailed below:</p>
2.31.35	<p>35. The Wiston Estate has provided this plan based upon the description of the route given in the Alternatives chapter of the ES for Rampion 1 (Provided at Appendix 2).</p>	<p>1) The Energy System Operator (NGESO) and National Grid Electricity Transmission (NGET) are the owner and operator of the substations of the transmission network and the transmission network itself in the UK. As stated in previous responses, during the development of the project the Applicant has worked with National Grid to establish feasible grid connection options. This evaluation process was led by National Grid in 2020 and principally considered grid-side constraints related to the connection of Rampion 2 into the transmission network, available grid capacities at each connection point and associated operational aspects, such as grid stability. This assessment process resulted in the definition of a subset of technically feasible grid connection locations for further consideration and inclusion in the Connection and Infrastructure Options Note (CION). NG Ninfield substation was not presented as a feasible grid connection point by NGESO following these studies.</p>
2.31.36	<p>36. The reasons given by the Applicant for dismissing this route out of hand are found in [APP044] (Alternatives chapter of the ES). The summary of the reasons for dismissal are found in table 3-4 on p37: <i>'Requires crossing of SDNP. Prohibitive additional costs of a significantly longer marine cable Other issues include shipping, steep cliffs and ecological constraints including the Pevensey Levels SSSI.'</i></p>	<p>2) When considering the whole export system lengths which takes into account the offshore export lengths as well as the onshore cable route, the Ninfield connection results in a significantly longer export cable route approaching >90km in total length. The additional cable length required to reach the western parts of the Western Extension Area could increase this to >100km and thereby reaching the limits of what HVAC technology can deliver. It is to be noted, that the Offshore substation locations have not been finalised, however these will need to be sited in proximity to where the capacity is located in the offshore array area.</p>
2.31.37	<p>37. The problem with those reasons is that the route does not cross the SDNP. This is factually incorrect.</p>	<p>3) An HVDC export system was not considered for Rampion 2 as it is a new technology, which involves operational risks and significantly increased construction CAPEX. The requirement for HVDC would additionally have required larger Onshore substation infrastructure and, as a result increased environmental and visual impact.</p> <p>4) An increased offshore export cable corridor length does incur disproportionately higher CAPEX costs in comparison to onshore cable construction as already presented in the response to Action Points arising from Compulsory Acquisition Hearing 1 [REP4-074]. Additionally, offshore cable construction presents an increased risk for construction health and safety (for example due to offshore UXO defusal requirements) and permanent operational risk to cable infrastructure (due to anchor strike). As per the Health and Safety Regulations (CDM 2015), the Applicant is obliged to eliminate potential Health and Safety Hazards wherever possible during the design stage. Therefore, extended offshore cable routing length is disadvantageous and avoided by the project.</p> <p>(RESPONSE TO 2.1.35:) With regards to the alternative offshore cable routes, the Applicant has reviewed the proposed routing for a connection to Ninfield provided in Wiston Estate, Richard John Goring, Richard Harry Goring, P Goring, Wiston Estate Partnership, Rock Common Limited Deadline 3 Submission [REP3-144] "Rampion 2 Landfall Options" and disagrees that the provided plan presents a realistic case for routing of power cable</p>

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		<p>infrastructure as it does not appropriately take into account critical factors, such as cable route length, geotechnical conditions and seabed characterisation.</p> <p>The Wiston Estate have produced their own plan and made their own assertions regarding the feasibility. For example, with regard to the need to cross the Pevensy Levels SSSI, "there is absolutely no reason why HDD couldn't be used to drill under it." The Wiston Estate have chosen a section of the SSSI where it is at the shortest extent from the shore and would require landfall to be located and an HDD progressed at least 750m from the shore to avoid the SSSI and Flood Zone 3. In addition, this would include crossing of other major features including the railway line. The Applicant must stress that the feasibility evaluation of a cable landfall must consider several factors including geotechnical, electrical, logistical and environmental aspects. The additional length of circa 750m to cross underneath the SSSI and the Cooden Beach Golf Club would present an engineering challenge as this would be in addition to the distance required to exit below the LAT mark.</p> <p>With regards crossing the SDNP, the Applicant notes that paragraph 3.3.14 of Chapter 3: Alternatives, Volume 2 of the Environmental Statement [APP-044] states that "<i>depending on the landfall location, Ninfield may also require cabling through the SDNP</i>". The Applicant will issue a minor correction to the quoted Table 3-4 to clarify this point. The landfall location assumed by the Wiston Estate in their assessment is clearly not feasible and does not provide a reasonable alternative to Proposed Development as planned or an alternative that avoids crossing the SDNP.</p>
2.31.38	<p>38. The Applicant has provided no justification for the £300m figure. In particular, it doesn't appear to have factored in the cost of the significantly longer onshore cable for the proposed scheme (35km for the proposed scheme vs 6km for Ninfield) but only purports to be the cost of the longer offshore cable.</p>	<p>The Applicant has provided additional detail on the supply and installation cost in the Applicants Responses to Action Points arising from Compulsory Acquisition Hearing 1 [REP4-074]. The Applicant can also confirm that the additional cost as presented in Chapter 3: Alternatives, Volume 2 of the Environmental Statement [APP-044] includes reduced cost associated with shorter onshore cable route of a Ninfield connection, which is however outweighed by significantly increased costs associated with the offshore cable route of this option.</p>
2.31.39	<p>39. The concern over the length of the offshore cable was expressed at Rampion 1, but it has to be considered that the Rampion 1 onshore cable is much shorter than is proposed for Rampion 2 (see table 1 of A3.1-4 Appendix 2) which gives the figure of 19-20km. As such, the overall cost differential between Bolney and Ninfield for Rampion 2 would be much less than Bolney and Ninfield for Rampion 1.</p>	<p>The Applicant disagrees with this conclusion drawn by the Affected Party, specifically due to the location of the Rampion 1 array area and the potential locations for Rampion 2 Offshore substations which would have to serve an array area up to 26 km further west than the westernmost extent of the Rampion 1 array area. The cost differential of connecting Rampion 2 to Ninfield would be higher than the cost differential of connecting Rampion 1 – not that the comparison really matters. It is simply not economically rational to connect Rampion 2 to Ninfield, nor was it an available grid connection option presented by NGENSO.</p>
2.31.40	<p>40. It is noted that the Ninfield connection was estimated for Rampion 1 as being an additional +£132-138m (also table 1 of A3.1-4, Appendix 2). Therefore the figure now given of an additional £300m is simply not credible, quite apart from the fact that it does not appear to have factored in the cost of the significantly longer onshore cable for the proposed scheme.</p>	<p>The Applicant notes that the cost differential for a Ninfield connection estimated for Rampion 1 cannot be directly transposed onto Rampion 2. Important factors that need to be considered for this are related to cable specification (Rampion 1 operates a 150kV voltage for the export cables, compared to up to 275kV voltage for Rampion 2), the number of installed export circuits (Rampion 1 installed two export cable circuits compared to up to four export circuits for Rampion 2) both of which would drastically impact cost of cable supply and installation. Furthermore, the procurement of Rampion 1 cables and installation services would have been undertaken in 2015. It is however known that supply chain of offshore wind projects has</p>

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		become more constrained in recent years and that the cost of supply and installation services has increased since Rampion 1.
2.31.41	41. Finally on the issue of cost, merely because something costs more does not mean it is unviable. There is no evidence that additional cost would make the proposal unviable. The fact that an option is more expensive is not a reason to dismiss it, particularly where it would avoid mineral sterilization and would avoid the SDNP in its entirety.	The Applicant confirms that cost is not the only consideration when developing the offshore project design and emphasises that other factors other than cost were considered as the Ninfield connection option was discounted. The leading factor is presented in Response to point 2.31.34, (1) .
2.31.42	42. There are no steep cliffs in the area where the cable would connect. The Applicant didn't dispute this point at the hearing.	The Applicant notes that there are no "steep cliffs" at the hypothetical landfall location that the Affected Party has asserted would provide an option to connect to Ninfield. The Applicant notes that it is possible that a feasible landfall location could be identified, however these would have to be developed in a holistic approach taking into account all of the potential technical and environmental constraints seawards and landwards of the MHW mark, a process which usually takes several years to fully complete. The Applicant refers to its response to reference 2.31.34 for the reason not to pursue the Ninfield connection option further.
2.31.43	43. The area of the Pevensey levels which is referred to is currently in use as a golf course and there is absolutely no reason why HDD couldn't be used to drill under it. The Applicant didn't dispute this point at the hearing.	The Applicant refers to the response given to reference 2.31.42 .
2.31.44	44. At the hearing the Applicant added one more reason for not choosing Ninfield. The Applicant stated that Ninfield was not one of the substations put forward by the National Grid in their Infrastructure Notice Process. If this is a reason for not selecting Ninfield then it is extraordinary that the reason appears nowhere in the documentation before the Examination. Further, it is striking that the Rampion 1 Alternatives document expressly states that Ninfield did have sufficient capacity for a connection (page A3.1-3, Appendix 2). The Applicant has been asked by the ExA to provide the correspondence with the National Grid regarding Ninfield. This will no doubt include the National Grid's Infrastructure Notice Process Report. The Wiston Estate looks forward to receiving this and will comment further once it is received. However, it notes that the Applicant did not state that the National Grid stated that Ninfield was not feasible.	The Applicant has clearly set out in its response to CAH1 Action Point 12 (see Applicant's Response to Action Points Arising from Issue Specific Hearing 2 and Compulsory Acquisition Hearing 1 [REP4-074]) regarding Ninfield, the CION and where the information referred to is provided in the DCO Application. The Applicant notes that the Wiston Estate's statement regarding Ninfield having capacity for Rampion 1 is completely irrelevant to this Examination as it is not the scheme that is subject to the Application. The chapter quoted is from the Rampion 1 application submitted a number of years ago for a different scheme with a far smaller capacity of 400MW.
2.31.45	45. There are a number of other more localised alternatives available to the Applicant. Relevant to this, there are two potential land uses on the Wiston Estate which are particularly sensitive: a. Areas where there is soft sand; b. Land which is suitable to be planted for vines	The Applicant has no further comments on this paragraph at this time.
2.31.46	46. The minerals area shown on p4 of [REP3-144] is not the full extent of the mineral resource and an explanation of that will be provided in the Avison Young report. But, even if one only considers the MSA, one can see that it is <u>hard to conceive of a scheme which would sterilise more mineral.</u>	This is an unsubstantiated assertion. See response to Rampion 2 Cable Route Alternatives & Mineral Sterilisation [REP4-136] .
2.31.47	47. Fields suitable for vines shown on the plan at p32 of the Estate's Written Representations – [REP1-172]. This is further supported by the report at Appendix 3 (Viticulture Site Suitability Analysis by Knight Frank). This shows that the Applicant's route will have a disproportionate impact on fields which have been identified as suitable for growing vines. The cable will cut east to west across the small triangular field to the south of 'the pike' (Appendix 2 to Appendix 3) and also the field to the north east of Buncton Manor.	The Applicant has taken due consideration of the current agricultural uses of land when designing the scheme. The Applicant has taken account of current and reasonably foreseeable land uses, such as planning policy allocations, planning applications and emerging schemes. However, the Applicant has seen nothing to suggest that the vineyard expansion proposal is anything more than speculative and aspirational. The land may be 'suitable for growing vines' but there is no business plan (that the Applicant has seen) and there is no explanation as to

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	<p>As the report states (on page 1) the ideal planting orientation is north to south to maximise solar radiation. As such, a cable which crosses east/west is clearly more harmful than one which crosses north/south.</p>	<p>whether only this land is suitable for expansion and not other areas of the wider Wiston Estate. Little to no weight can be placed on this 'proposal' when assessing the significant public benefits of the Proposed Development against the impact on private rights.</p> <p>The Applicant notes the Wiston Estate currently produces vines on 30 acres of the 6,000 acre Estate with the current vineyards located around 3km south of those proposed within the Knight Frank report. The current vineyards are shown on the map submitted at Appendix K within Applicant's Comments on Deadline 3 Submissions [REP4-070]. A further zoomed out version of this map has been submitted as part of the Deadline 5 submission, to show the full extent of the Estate.</p> <p>The Applicant notes also that the assessment made by Knight Frank in April 2024 identifies an area of around 180 acres as suitable for growing vines although it is unclear whether the assessment includes all land within the 6,000 acre Estate or just the area around the cable route. Of the 180 acres assessed around 7.3 acres or 4% (based upon a 40m width) will be taken up during the construction of the RED project and around 3.65 acres or 2% (based upon a 20m width) will have a restriction on the landowner not to plant anything that could affect the cable, with a root depth of greater than 0.9m, once the Project is constructed.</p> <p>It appears there are other areas showing within the Appendix 2 – Aspect Map within the Wiston Estate which meet the same requirements as identified for growing vines, with the same levels of Temperature, Precipitation, Ground Frost, Soil type, Elevation and Slope Orientation that has been used to identify the 180 acres and it is not clear from the Knight Frank assessment as to why the other areas within the Wiston Estate have been discounted.</p> <p>Whilst it is acknowledged that guides on growing vines suggest planting in a north-south orientation to maximise sunlight there is also a preference to orientate vine growing down the incline which is shown by the orientation of some of the vine planting at the Wiston Estate Winery, Mount Harry and Kinsbrook Vineyards that have been planted in a more east/ west orientation. The Applicant notes the field to the North East of Buncton Manor does have a east/west slope on the field however the South of the "pike" field is orientated North/South.</p> <p>Grapevines are planted around 2.5m apart to allow for access between the vines which means 5m of the RED 20m easement corridor would be used as the separation between the vines regardless.</p> <p>It is clear from Appendix 4 of the Knight Frank Assessment that there is significant land within the wider area that is suitable for growing vines given the number of existing vineyards operating within a 15 mile radius and therefore land suitable for growing vines is not restricted to the specific locations identified as potentially suitable by the Land Interest. The proportion of potentially suitable land within the Order Limits is only a very small percentage of the overall availability of suitable land within the 6,000 acre Estate.</p> <p>In any event, as noted above, the Applicant has also not seen anything to confirm the plans for vine planting is progressing, such as timescales or a business plan regarding the planting of vines.</p>

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2.31.48	48. There are a number of available alternatives to the Applicant in the local vicinity which would significantly reduce mineral sterilization and would avoid or lessen the impact on fields which are suitable for vines.	See response to Rampion 2 Cable Route Alternatives & Mineral Sterilisation [REP4-136].
2.31.49	49. One is the blue route which was proposed by Wiston Parish Council – Plan at page 4 of [REP3-144] – this would run to the south of Washington and be separate from but broadly follow the gas pipeline which already has sterilized some mineral in this area and will also have impacted upon the ability to grow vines.	See response to Rampion 2 Cable Route Alternatives & Mineral Sterilisation [REP4-136].
2.31.50	50. The Avison Young Report which the Wiston Estate will provide will show that this alternative and/or a slightly amended version will also lead to significantly less sterilization of minerals.	See response to Rampion 2 Cable Route Alternatives & Mineral Sterilisation [REP4-136].
2.31.51	<p>51. The presence and route of the gas pipeline doesn't present a reason for discounting this option, see:</p> <p>a. Chapter 27 of the ES 'Major accidents and disasters' [APP-068] which makes clear that the Applicant is proposing works in close proximity to gas mains (see HSE consultation response p20-21);</p> <p>b. Para 27.10.06 of chapter 27 states: 'The area surrounding the onshore elements of the Proposed Development is predominantly rural, but there are utility systems which are in close proximity or will need to be crossed by the onshore cable corridor. For any works in close proximity to gas pipelines including crossings, the appropriate safe methods of work will be agreed with the pipeline operator and suitable risk assessment undertaken';</p> <p>c. Part 5 of schedule 10 of the draft DCO contains protective provisions for Southern Gas Networks where development is within 15m, therefore there is no reason why the alternative route couldn't track the location of the gas pipeline whilst remaining 15m from it, save for where a crossing had to occur (as is the case at other locations on the proposed route);</p> <p>d. In fact, because the gas pipeline has already sterilized minerals either side it is obviously sensible to follow its alignment.</p>	<p>a. See response in Table 2-30.</p> <p>The construction of a utility crossing, at which the cable construction interfaces with existing gas infrastructure in a single location (by crossing the services perpendicularly) is not comparable to constructing the cable corridor in parallel and proximity to existing high pressure gas services over a distance of over 6 kilometres. As presented by the Wiston Estate, Chapter 27 presents the mechanism for the design and construction process of a perpendicular services crossing. During the development of the cable route, Southern Gas Networks confirmed the requirement of crossing angles to be 90 degrees with an allowable tolerance of crossing angle of 15 degree to the Applicant. For such perpendicular crossings, a peer review process for the design and construction methods is undertaken by Southern Gas Network Engineers. Typically, cable construction in close proximity to the gas pipeline(s) is undertaken via hand-dig methods to reduce the construction risk. A deliberate construction choice to construct the cable in parallel to existing high-pressure gas infrastructure would conflict with the regulatory requirements of the Construction Design and Management (CDM) Regulations 2015 and therefore the Health and Safety at Work Act 1974, which requires the project designer to eliminate avoidable construction risks during the design process. The Applicant confirms that the gas pipeline was not the sole reason to discount the Wiston Blue Route, however it factored heavily in the decision to discount this route option which considered in combination with the reasons presented to the Examination previously [REF to D2, D3 and D4 Responses to this matter].</p>
2.31.52	52. At the hearing the Applicant did not dispute the fact that the gas pipeline does not provide a reason for discounting the route.	<p>See response in Table 2-30.</p> <p>The Applicant refers to the response given to reference 2.31.51, above.</p>
2.31.53	53. One of the main reasons that the Applicant has given for not taking this route forward is that it would need to cross some ancient woodland. However, there is no reason why HDD couldn't be used to navigate this. Indeed, this is exactly what it is proposing in Calcott Wood, also on the Wiston Estate. Again, the Applicant did not dispute this at the hearing. This will be further addressed in the Avison Young report.	See response in Table 2-30 .

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2.31.54	54. The Applicant also claims that access to construct this route from the A24 would be difficult. But that is clearly unjustified. There is a major slip road from the A24 in exactly the area of the alternative which served the chalk quarry (proposed alternative compound on the plan) – that slip road is clearly capable of hosting large construction traffic. There is no reason why it could not do so again. The Applicant did not dispute this.	See response in Table 2-30 .
2.31.55	55. There is also at least one more minor variation to the route which is on a plan before the examination and which would reduce the level of mineral sterilization and reduce the impact upon fields which are suitable for the planting of vines.	See response in Table 2-30 .
2.31.56	56. The yellow route on p22 of [REP3-142]. This follows the southern edge of the A283. The A283 has already sterilized some sand either side of it because there would have to be a buffer between any quarrying and the road. Therefore, running the cable alongside the road obviously reduces sterilization. Again, this will be addressed in the Avison Young report.	See response in Table 2-30 .
2.31.57	57. The Applicant states that this was discounted due to the proximity of the landfill at Windmill Quarry. However this ignores the fact that the proposed route already hugs the landfill site, within 50m of it.	See response in Table 2-30 .
2.31.58	58. Further, construction activities located on or adjacent to landfills have been scoped out as leading to potentially significant effects – ES chapter 24 [APP-065] p38. Page 79-80 of the same document states that given the presence of active control measures operated under the environmental permit at Windmill Quarry the risk of encountering contamination is considered to be 'low'.	See response in Table 2-30 .
2.31.59	59. As such, the fact that there will be some additional length of the cable adjacent to the landfill cannot reasonably be a reason to reject this route. Again, the Applicant did not take the opportunity to dispute this at the hearing.	See response in Table 2-30 .
2.31.60	60. The Applicant goes on to state that the area of sand to the south of the A283 is unlikely to be viable for extraction in isolation as a result of the need to cross the A283 (p22 [REP3-142]). That is wrong, the Wiston Estate owns all of the surrounding land in this area and minerals have been worked in this area for 80 years. As the estate owns land either side of the A283 it can facilitate access to this road, if necessary. Again, the Applicant did not dispute this at the hearing.	See response to references 2.31.25-2.31.27 above.
2.31.61	61. The reasons presented by the Applicant for not opting for either the blue route or more minor variations do not stand up to scrutiny and have failed to appreciate the fact that national and local policy requires the Applicant to avoid unnecessary sterilization of minerals. There are alternatives available which would either avoid the mineral resource or significantly reduce the impact. Therefore, it has failed, contrary to EN-1, to safeguard minerals or to mitigate its impact upon those minerals. The application should be refused on this basis.	See response to references 2.31.31-2.31.33 above in relation to the consideration of alternatives. It is also relevant to note that, as assessed within the Planning Statement [APP-036] , the decision on the application will be made following a consideration of all relevant planning policies and material considerations, not just those relating to minerals.
2.31.62	62. The Applicant has also failed to give sufficient weight to sterilization of fields which are suitable for the planting of vines and thereby minimising the harm caused.	See response to reference 2.1.47 .

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2.31.63	63. Overall, there are less harmful alternatives available and there is therefore no compelling case in the public interest for the Wiston Estate's land to be subject to compulsory acquisition.	See the response to reference 2.31.11 above
2.31.64	<p>Lack of Engagement</p> <p>64. The statutory test requires there to be a compelling case in the public interest (s122 PA 2008).</p>	<p>The Applicant submits that it has complied with Paragraph 25 of the CA Guidance 2013 by seeking to acquire land by negotiation wherever practicable. In accordance with that guidance, given the circa 38km linear onshore cable corridor in multiple ownership, it was reasonable to include a provision in the draft DCO for compulsory acquisition at the outset. However, the Applicant has continued where practicable to engage with all affected parties, including the Land Interest, since the submission of the Application and throughout the Examination, and it continues to regard compulsory acquisition as a last resort, as can clearly be seen by the continued engagement and attempts to reach agreement with the Landowner that are reported in 4.6.8 Land Engagement Reports.</p>
2.31.65	<p>65. The CA Guidance (Sept 2013) states:</p> <p><i>'25. Applicants should seek to acquire land by negotiation wherever practicable. <u>As a general rule, authority to acquire land compulsorily should only be sought as part of an order granting development consent if attempts to acquire by agreement fail.</u> Where proposals would entail the compulsory acquisition of many separate plots of land (such as for long, linear schemes) it may not always be practicable to acquire by agreement each plot of land. Where this is the case it is reasonable to include provision authorising compulsory acquisition covering all the land required at the outset'</i></p>	<p>Details of the Applicant's approach to landowner negotiations may also be found in 8.92 Land Acquisition Strategy</p> <p>Notwithstanding those negotiations, it has not been possible to conclude terms with all parties therefore compulsory acquisition powers are necessary to ensure that this NSIP can be delivered and that its significant public benefits can be realised.</p>
2.31.66	66. The CA Guidance also emphasises the need for alternative dispute resolution techniques to be used (see para 27).	<p>At present, the Land Interest is not willing to conclude an agreement for the land rights sought therefore the conclusion of a voluntary agreement with the land interest is not currently an alternative to compulsory acquisition, and compulsory acquisition powers are therefore necessary, without which the project could not proceed in a reasonable timescale, if at all.</p>
2.31.67	<p>67. The CA Guidance makes clear that further guidance is to be found in the Crichel Down Rules (para 45). This states in Part 2 that:</p> <p><i>The confirming authority will expect the acquiring authority to demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the Order by agreement. Where acquiring authorities decide to/arrange to acquire land by agreement, they will pay compensation as if it had been compulsorily purchased, unless the land was already on offer on the open market.</i></p> <p><i><u>Compulsory purchase is intended as a last resort to secure the assembly of all the land needed for the implementation of projects.</u> However, if an acquiring authority waits for negotiations to break down before starting the compulsory purchase process, valuable time will be lost. Therefore, depending on when the land is required, it may often be sensible, given the amount of time required to complete the compulsory purchase process, for the acquiring authority to:</i></p> <ul style="list-style-type: none"> <i>• plan a compulsory purchase timetable as a contingency measure; and</i> <i>• initiate formal procedures</i> <p><i>This will also help to make the seriousness of the authority's intentions clear from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations.'</i></p>	<p>The non grant of CA rights would put the delivery of a nationally significant infrastructure project, and the extensive public benefits it will bring, at significant risk.</p>
2.31.68	68. There have been recent high profile appeal decisions where the Secretary of State has refused to confirm CPOs at least in part due to lack of meaningful engagement. Two examples of this are:	<p>The Land Interest refers to the London Borough of Barking and Dagenham Council (Vicarage Field and Surrounding Land) Compulsory Purchase Order 2021, which was refused by an Inspector on 4 October 2022 [see Appendix P]. The circumstances of that CPO are vastly</p>

Ref	Deadline 4 submission	Applicant's comments
	<p>a. Vicarage Field – London Borough of Barking and Dagenham, this was a proposed regeneration scheme over c32,000sqm of land. Here, the Inspector noted largely ineffective attempts to acquire by agreement this included on the basis that offers were not market value.</p> <p>b. Nicholsons Shopping Centre – Royal Borough of Windsor & Maidenhead, here the Inspector found no 'proper degree of constructive engagement'. The CPO was found not to be being pursued as a measure of last resort.</p>	<p>different to the Proposed Development as it concerned the acquisition, relocation or extinguishment of businesses in an existing shopping centre.</p> <p>The reasons for refusing the CPO were many, including:</p> <ul style="list-style-type: none"> • The Inspector was not satisfied that the scheme was viable, particularly as the evidence that accompanied the planning application found the scheme to be 'substantially unviable'. This does not apply to the Proposed Development, for which the Applicant has provided a comprehensive Funding Statement which has not been challenged; • The Inspector was not satisfied that there was sufficient financial resources to compensate for business extinguishment. This does not apply to the Proposed Development. No businesses are to be extinguished and the Applicant's evidence in the Funding Statement on its ability to meet compensation liability is unchallenged; • No evidence as to need/future commercial occupation. This does not apply to the Proposed Development for which the needs case is fully grounded in National Policy; • A failure to negotiate in line with the DLUHC CPO Guidance (2019) . The Applicant's land acquisition strategy has regard to both the Planning Act 2008 CA Guidance and the DLUHC Guidance (2019). Further explanation is provided in [refer to land engagement strategy doc that is going in]; • Claims that financial offers were substandard. This does not apply to the Proposed Development. No land agent acting on behalf of a land interest has demonstrated that financial offers have not reflected market value. The Applicant's offers have reflected the freehold market value of the land, despite only new rights being sought, which is well in excess of the Compensation Code statutory basis of compensation. As explained in the 4.6.8 Land Engagement Report enhanced offers have recently been made which go even further above the freehold market value of the land. • Extensive delays in progressing the scheme, with 3 years from the Cabinet resolution to make the CPO before it was actually made, increased the uncertainty for businesses. This does not apply to the Proposed Development, which has been progressed in a timely way, having regard to statutory consultation requirements. • Lack of information provision at the outset. This does not apply to the Proposed Development which has been subject to extensive consultation, both statutory and non-statutory. <p>The Applicant is not seeking to acquire land, save at the substations, nor will its acquisition require the relocation or extinguishment of businesses. There will be temporary impacts on land use but the Applicant has given binding commitments which are secured by the DCO to seek to minimise land acquisition and mitigate land impacts.</p> <p>The Vicarage Fields CPO decision is not at all comparable to the Applicant's approach in respect of the draft DCO and the Proposed Development.</p>

Ref	Deadline 4 submission	Applicant's comments
		<p>Nor is the Royal Borough of Windsor & Maidenhead (Nicholsons Shopping Centre and Surrounding Area at High Street, Queen Street and King Street, Maidenhead) Compulsory Purchase Order 2022 comparable to the Proposed Development [see Appendix Q]. That CPO, which was refused by an Inspector in January 2023, also concerned the demolition and redevelopment of an outdated shopping centre. This required the closure and relocation and/or extinguishment of a number of businesses, one of which 'Smokey's nightclub' was a particularly valued local facility for the town. The acquiring authority offered relocation premises but the new premises could not accommodate all of the facilities that Smokey's currently enjoyed, notably an outdoor smoking area.</p> <p>The Inspector found that:</p> <ul style="list-style-type: none"> • Smokeys had an importance to the town and that if it were lost it would have a significant adverse impact extending beyond the staff, performers and customers; • <i>The failure of the Authority and their partners, over a period of more than three years, to provide the Pages with any viable relocation options to keep their business alive, demonstrated a lack of genuinely constructive engagement.</i> • <i>"The point of the exercise was to relocate the existing business, not simply to make generic provision for any nightclub. In their existing premises, Smokeys has the benefit of an external terrace, which is evidently well-used. It was not unreasonable for the owners to want to achieve a like-for-like replacement for that facility."</i> • Accordingly, the benefits of the scheme did not therefore outweigh the impact on the owners of the club. <p>The draft DCO, which seeks rights for a buried cable through the Land Interest's estate, which will not sterilise land uses, require land uses to cease or businesses to relocate; is not remotely comparable to the Nicholsons CPO decision.</p>
2.31.69	69. Here there has been a clear lack of meaningful engagement and CA is not being sought as a last resort.	The Applicant has previously outlined engagement with the landowner with the Applicant's response to Wiston Estate's Deadline 1 ,2 and 3 submissions. Please see Table 2.28.7, 2.28.10, 2.28.16, 2.28.60 within Applicant's Comments on Deadline 3 Submissions [REP4-070] for further information.
2.31.70	70. [REDACTED] made the point that she should not be at the hearing, a major reason why she has been instructed is the level of frustration that the Wiston Estate has with the unreasonable behaviour of the Applicant and a refusal to enter into serious negotiations which have any real prospect of reaching an agreed settlement.	<p>The Applicant notes the Landowner continues to engage with the Applicant on the terms of the commercial agreement with a further 4 hour meeting on the 28 May 2024 allowing for an update to the commercial offering to the landowner, taking on board some of their concerns where reasonably practicable.</p> <p>The landowner is agreeable to instructing their solicitors to review the documentation and an undertaking has been provided by the Applicant's solicitor for them to legally review the Heads of Terms. The Applicant welcomes further engagement with the landowner on reaching mutually agreeable terms. An amended set of Heads of Terms was sent to the Applicant on 17 June 2024, following the changes discussed at the meeting on 28 May 2024.</p>
2.31.71	71. The Estate's written representations [REP1-172] go into some detail but the headline points are:	a) The Applicant has had various meetings with the Wiston Estate and their tenants since 2021, some of which were on site and some of which were within the Estate Office or Wiston Meeting Place. These meetings resulted in the assessment of alternative routes

Ref	Deadline 4 submission	Applicant's comments
	<p>a. From the beginning the Wiston Estate has sought to engage with the Applicant and has been willing to discuss the route and agree terms. The Estate can produce emails from 2021 when this was first set out by the Estate if necessary.</p> <p>b. Whilst the Applicant may have sent some emails and conducted the odd site visit/meeting there has been no real engagement. By real engagement we mean engagement which has any prospect of arriving at a negotiated settlement.</p> <p>c. This is a story which has gone on for more than 3 years. It's difficult to summarise this briefly but a few headline examples of the Applicant's approach are:</p> <p>i. In 2021 the Applicant came onto estate land without any written or verbal agreement to conduct surveys, this had significant ramifications for some of the farm tenants.</p> <p>ii. The Applicant opened negotiations by seeking rights over the entirety of the land titles – so c.1.5 thousand acres. It was only in November 2023 that the Applicant agreed to the rights being limited to the DCO boundary – that was after the DCO was submitted.</p> <p>iii. As such, when the Applicant states that it issued HoT prior to the DCO being applied for these were obviously unreasonable.</p> <p>iv. In any event a group of agents representing 40 of the landowners provided general comments on the HoTs – the Applicant's response to this in May 2023 was brief and dismissive. It didn't invite any further engagement or a meeting to progress discussions.</p> <p>v. The Applicant even rejected an offer from the CLA to facilitate a meeting from the agent's group to progress discussions on the HoTs – see CLA [REP2-027].</p> <p>vi. Even as matters progressed, the HoTs continued to lack key details such as construction and operational accesses. For example, it was only in February 2024 that the Applicant provided HoTs for the construction compound.</p> <p>vii. As matters progressed, the HoTs have continued to ask for more than the DCO – until mid-May the Applicant was seeking a permanent 40m right to access land for construction and maintenance.</p> <p>viii. The Applicant has wholly failed to engage with or explain or justify why they are not pursuing alternative routes which would be much less harmful to the Estate, including the mineral resource, despite the Estate spending time and money setting these out.</p> <p>ix. The Applicant has failed to explain how minerals are to be dealt with. Worse than this – the Applicant has represented to the ExA that:</p>	<p>proposed by the Estate (and their tenants), some of which were taken forwards to the final DCO Order Limits. The period between 2021 and 2023 was for engagement, consultation, the assessment of alternative routes, and the gathering of survey data. As previously outlined within Table 2.28.60 within Applicant's Comments on Deadline 3 Submissions [REP4-070], only when there was a final proposed cable route (design freeze) was it possible to send the first round of Heads of Terms to landowners in March 2023. The Option and Easement documentation was provided in October 2023.</p> <p>b) As previously outlined, the Applicant has been actively engaging with the Wiston Estate to negotiate and agree Heads of Terms. Please see Table 2.28.7, 2.28.10, 2.28.16, 2.28.60 and 2.28.69 within Applicant's Comments on Deadline 3 Submissions [REP4-070] for further information.</p> <p>c) Please see comment within 'a' regarding 'design freeze'</p> <p>i. Please see response provided within Table 2.28.97 within Applicant's Comments on Deadline 3 Submissions [REP4-070].</p> <p>ii. As various alternative routes were being considered during consultation phases of the project, various areas within the Wiston Estate were being considered. These were always being considered on a mutually exclusive basis – so there was no point at which the Applicant sought rights over 1.5 thousand acres of the Estate. Once the routing was finalised Heads of Terms were provided to the landowner identifying the rights over the relevant DCO boundary.</p> <p>Very limited rights are requested in the voluntary agreements outside of the DCO Order Limits and where they have been requested, it is on the express basis that they would be subject to further agreements between the parties. These include rights for limited ecological mitigation if required, and rights to install land drainage, if required by a drainage design, to be agreed with the landowner.</p> <p>iii. The Heads of Terms issued contained proposed rights which are considered reasonable and proportionate. Detailed discussions have taken place subsequent to the first issue of Heads of Terms with the landowner with regard to the areas of land the rights are required/ appropriate and amended Heads of Terms were subsequently issued to address the concerns. This is an example of action taken by the Applicant to meaningfully engage and agree matters which increase materially the prospect of arriving at a negotiated settlement contrary to the clearly false claims made by the landowner at 2.1.71 (b) that no efforts have been made by the Applicant to meaningfully engage.</p> <p>iv/v. A meeting with the CLA took place in July 2023. The principles of the Heads of Terms were discussed and it was confirmed that ongoing discussion with landowners would be on an individual landowner basis rather than discuss detailed landowner requirements in a group forum as that would clearly be inappropriate. The Applicant's response to the CLA can be found in Table 2.6 within Deadline 2 Submission 8.51 Applicant's Response to Affected Parties' Written Representations [REP2-028].</p>

Ref	Deadline 4 submission	Applicant's comments
	<p>1. 'Construction strategies will be implemented that will seek to maximise the reuse of excavated clean materials from the onshore cable construction corridor where practicable or feasible. Prior to the stage of construction, an MPP will be developed which outlines where excavated non-waste materials will be reused in line with the CL:AIRE (2011) Definition of Waste Code of Practice...' CoCP table 4-9, commitment C-69, [REP3-025] Rev C pp37-8</p> <p>2. This is re-iterated in the Ground Conditions chapter of the ES [APP-065] at para 24.9.48 page 8 which states that re-use would minimize the amount of sand sterilized.</p> <p>x. In response to suggestions from the Wiston Estate that it should be compensated for the mineral, the Applicant has stated, contrary to the terms of the outline CoCP and its own ES, that it will not extract minerals from the land for use in the construction of the project because it doesn't have the necessary consents/permits.</p> <p>xi. So, there is a situation where the Applicant is saying one thing to you the ExA and the exact opposite to the landowner.</p> <p>xii. Finally, putting all of that aside, whatever has gone on before, whatever the meetings and emails, the fact is that the Applicant is refusing to offer fair compensation for the impact which the Wiston Estate will suffer. As such, the three years which the Estate has spent considerable time and effort trying to negotiate sensibly is frankly pointless because unless and until the Applicant approaches this seriously there simply isn't scope for an agreement.</p>	<p>vi. The Applicant produced Works Plans which detail all the construction and operational accesses proposed across the Route. These were sent out as standard as part of the Statutory Consultations in 2021 and 2022. The Applicant has already provided a response on this point. Please see further detail within 2.28.16 and 2.28.60 within Deadline 2 Submission 8.51 Applicant's Response to Affected Parties' Written Representations [REP2-028].</p> <p>vii. Please see comments above within 'ii'.</p> <p>viii. The response to the alternative routes proposed by the Landowner in their latest submission have been covered in Table 2-1.</p> <p>(ix) and (x) The Wiston Estate has misrepresented the position to the ExA and the Applicant clarifies as follows to clear up any misunderstanding. The Applicant will need to excavate within the MSA in order to construct the cable corridor and as per standard construction practice will seek to reuse the excavated material to backfill the trenches. Put simply, the materials will be reused on site in the locations from which they are broadly dug out in order to back fill the trenches that the Applicant seeks to dig. The Applicant has also confirmed and secured the fact that the minerals will not be treated as waste. The Applicant has not submitted any application for consent to extract minerals specifically for use on the construction of the project as it is not required. The Applicant provided an update to the Outline Code of Construction Practice [REP4-043] at Deadline 4 at Section 4.13 to set out how any excavated minerals, if encountered, would be dealt with.</p> <p>Xi The Applicant does not agree with this statement as has been clarified above.</p> <p>Xii The Applicant has set out a fair financial offer of compensation to the landowner following the process and steps outlined in 4.6.8 Land Engagement Report.</p> <p>The Key Terms offered in March 2023 based on a value of £15,000/acre and took into account an assumption that agricultural land in the vicinity of the Proposed Development may attract a freehold market value in the region of between £10,000 to £13,000/ac. This offer has since been increased by around 20%, to be based upon £18,200 per acre, since the initial Heads of Terms were circulated. This valuation and offer takes into account all current agricultural uses of the Land Interests land.</p> <p>It should be noted that under the Compulsory Purchase Compensation Code, the statutory basis for the assessment of compensation for the acquisition of rights is pursuant to Section 7 of the Compulsory Purchase Act 1965, being compensation for severance and injurious affection based on the diminution in value of the land as a result of the acquisition of the rights.</p> <p>In private treaty discussions, when assessing the value of cable rights, a common approach is to adopt a 50% discount of the freehold value to produce a recognition payment. This 50% discount to freehold market value was not applied by the Applicant, who instead set its offers at a significantly more favourable level reflecting the unencumbered freehold value of the easement area, despite the fact that the land subject to the cable easement is not being acquired and can continue to be enjoyed post construction, including for agricultural farmland, amenity land and equestrian uses. These offers were entirely fair and reasonable, at a level</p>

Ref	Deadline 4 submission	Applicant's comments
		<p>both well in excess of the Compensation Code and typical payments for easements, and also in excess of the freehold market value of agricultural land.</p> <p>As detailed in the response to reference 2.31.47 although the land interest has requested an additional uplift due to vine sterilisation the Applicant has seen nothing to suggest that the vineyard expansion proposal is anything more than speculative and aspirational. The land may be 'suitable for growing vines' but there is no business plan (that the Applicant has seen) and there is no explanation as to whether only this land is suitable for expansion and not other areas of the wider Wiston Estate.</p> <p>The Applicant understands from the various meetings held with the landowner that one of the key reasons the landowner is unhappy with the financial offer is due to not including any compensation due for temporary mineral sterilisation. Whilst mineral extraction within the cable route does not have any planning policy support or ongoing or consented planning applications, nor have any proposals been advanced by Wiston estate for their extraction we understand the landowners desire to protect the minerals in the longer term, for future generations of the family estate.</p> <p>The proposed development does not prevent that in that once it is decommissioned the Wiston estate can seek the necessary consents required to exploit the minerals. In the event the rights are acquired compulsorily then further commitments have been made in the Construction Method Statement to ensure any rights that are no longer required upon decommissioning are relinquished. The parties are in discussions regarding the equivalent provisions for any voluntary agreement.</p> <p>Despite the above position the Applicant has however requested a counteroffer from the Land Interest to include the landowner's compensation expectations on temporary sterilisation of sand so that it can be considered. The Applicant continues to wait for this counter offer. In the meantime the Applicant has updated the financial offer further to include the additional uplift and payments referenced above and await a further response on the updated offer.</p>
2.31.72	72. Notably, the Applicant did not disagree with any of the above points at the hearing.	The Applicant was not given an opportunity to respond to all of the points raised by the landowner at the hearing, however the Applicant has responded in writing.
2.31.73	73. Overall, what can be seen is that the CA powers are not being sought as a last resort and there has been no real attempt to acquire the land by agreement. As such, the Wiston Estate invites the ExA to find that due to the clear breach of the guidance there is no compelling case in the public interest for the CA powers to be confirmed.	<p>As a point of correction, the Applicant is not intending to acquire land, but is intending to acquire rights within the land to install a cable underneath the soil surface, by agreement. The land interest will retain the land, subject to various restrictions.</p> <p>Contrary to the claim made by the Wiston Estate, there have evidently been attempts made at acquiring the rights to land by agreement. The Applicant's record of engagement and negotiations is set out within 2.28.58, 2.28.59, 2.28.60, 2.28.6, 2.28.69, 2.28.72, 2.28.86 and 2.28.7 within Applicant's Comments on Deadline 3 Submissions [REP4-070] and in the Wiston Estate Land Engagement Report (Document Reference: 4.6.8). The extensive engagement (including changes to the Proposed Development further to the landowner's requests), and extensive negotiations on Heads of Terms documents has not led to the position of being close to securing a voluntary agreement. The commercial offer is yet to be agreed, but a revised offer and revised Heads of Terms were issued to the Wiston Estate on 17 June 2024.</p>

Ref	Deadline 4 submission	Applicant's comments
		<p>The Applicant considers that meaningful progress has been made with the Land Interest on the rest of the Heads of Terms, with the recent instruction of the landowner's solicitors to conduct a legal review after many additions and clarifications have been added to the Heads of Terms at the landowner's request. The Applicant will continue to engage with the landowner on the form of the agreements and is hopeful an agreeable deal can be reached.</p>
2.31.74	<p>Additional Representations</p> <p>74. The Wiston Estate undertook to provide a written response to the Applicant's claim to be paying reasonable fees.</p>	<p>All Wiston Estate professional fees, upon review of timesheets, which have been presented to the Applicant have been paid up to date. The Applicant will continue to review timesheets as negotiations continue. The Applicant has not received any further timesheets from Rachel Patch since those sent on 30 January 2024. However, the fees paid to date are significantly above any caps initially outlined by the project.</p>
2.31.75	<p>75. Initially the Applicant offered no fees when consulting on the project in 2021. The initial generic heads of terms issued in 2023 included an allowance for £750 capped agents' fees. Any additional payment would be forthcoming once heads of terms are signed. The £750 applied to all landowners, irrespective of the complexity of the issues.</p>	<p>Agent and Solicitor fees were included in the Heads of Terms including a standardised cap within the initial draft sent in 2023. The Applicant has committed to make payments towards reasonably incurred professional fees on the provision of an accompanying timesheet in accordance with the RICS Professional Statement (Surveyors advising in respect of compulsory purchase and statutory compensation). The Applicant initially provided an undertaking that they would reimburse reasonable and proper Agents fees on exchange of the Option Agreement at a stated level plus any unrecoverable VAT. The Applicant also stated that they would reimburse reasonable and proper fees incurred in the event that the Applicant withdraws from the transaction prior to exchange of the Option Agreement.</p> <p>Following details negotiations, where Agents have fully engaged with the requirement, the basis of payment of fees have been subject to revision, and clarification as set out within a Letter sent to all Landowners in June 2024, following CAH1.</p>
2.31.76	<p>76. The Applicant subsequently agreed to pay Agents fees in March 2024, and this has now been reflected in the updated Heads of Terms.</p>	<p>The Applicant has not yet received a timesheet for fees in respect of the previous agent acting for the Wiston Estate, Ralph Crathorne, who was involved with arranging survey licences, allowing survey access and engagement meetings between 2021 and 2022.</p> <p>The Wiston Estate appointed a new agent in 2023 (Rachel Patch) who submitted timesheets on 30 January 2024, which have been reviewed and paid accordingly.</p>
2.31.77	<p>77. It is only in mid-May that the Applicant agreed to pay for affected Tenants reasonable professional fees to review the proposed legal documentation and HOT. In late May the Applicant verbally agreed to pay legal fees, although the Wiston Estate awaits the legal undertaking for this.</p>	<p>The Applicant has been engaging with the landowner in connection with the detail contained within the Heads of Terms. Copies of the relevant tenancy agreements are awaited so that the details of occupancy can be confirmed with a clear understanding of the tenancy rights over the cable corridor. Whilst the names of the tenants are known, the Applicant has not seen copies of any relevant tenancy agreements that clearly documents the tenants' rights over the land in question.</p> <p>As commercial discussions are ongoing with the landowner. The Applicant has reached out to the advised tenants to offer legal fees to review a template occupiers consent agreement, a draft of which has also been provided to the tenants.</p> <p>A meeting has also been offered to all affected tenants, including attendance by the Applicant's ALO used on current Applicant projects in construction to help give real examples of the practical steps taken by the Applicant to minimise disruption to the tenants farming of the rest of the land and to outline the steps to claim compensation for any losses incurred.</p>

Ref	Deadline 4 submission	Applicant's comments
2.31.78	78. This piece meal approach to paying reasonable professional fees incurred by Wiston Estate in this matter, has not helped negotiations and has left the Estate unreasonably exposed to fees.	<p>The proposed split of payment as set out within the Key Terms for the required rights between landowner and tenant is subject to ongoing discussions between the Applicant and the landowner.</p> <p>On the matter of professional fees, as negotiations have progressed, where Agents have fully engaged with the Applicant to negotiate terms, the Applicant has requested that the Agents, where appropriate, provide fee estimates in the event that they considered the sums set out are deemed likely to be insufficient. As a way forward the Applicant has agreed, in a number of cases, that the agent notify the Applicant when the fees are within 10% of the estimated fee level, at which stage the fees incurred will be subject to review. If the fees have been reasonably and properly incurred, then these will be paid. A further fee estimate will then be requested, where appropriate, for the anticipated time and estimated fees to enable the parties to conclude negotiations and complete the relevant documents.</p> <p>The Applicant has agreed to make interim payments of professional fees where there is an agreed estimate and the fees are justified and where the fees incurred do not exceed 90% of the total estimate for land agent advice. Otherwise, fees will be paid as soon as practicable after the return of the signed Heads of Terms or completion of the relevant documentation and the provision of the invoice and time sheets.</p> <p>The Applicant also confirmed that reasonable and proper Agents fees incurred would be reimbursed in the event that the Applicant withdraws from the transaction prior to exchange of the required Agreement or where the documentation negotiations lead to the unacceptable material variation of requirements in addition or in place of the Key Terms agreed with the consequential result that parties are unable to proceed.</p> <p>A letter was sent out to all landowners and tenants in June 2024 confirming the position on fees as above. The Applicant has already provided legal instructions to the landowners that have signed their Heads of Terms along the cable route and have committed to do the same with Wiston. A letter was sent out to all landowners and tenants in June 2024. All professional fee invoices to date for agent time providing advice to the landowner and for negotiation of the commercial terms have been paid to date including an undertaking for a legal review of the documents. The only other fees the landowner has mentioned in meetings has been incurred in relation to objecting to the Application and having objections legally reviewed. These are not fees which are reimbursable under the Compensation Code and therefore the Applicant has reasonably declined to reimburse them.</p> <p>The landowner's claim is unfounded and it is noted that all their agent's fees had been paid up to date by the time of the CAH 1 hearing. The payment of fees is as set out in reference 2.31.75 above.</p>
2.31.79	79. The Applicant refused to pay fees of the Wiston Estate's land agent to attend any DCO hearings or the accompanied site visit.	<p>There was no requirement for the landowners Agent to attend the accompanied site visit which was expected to be for the Inspector to visit key locations, with no opportunity to ask questions of the inspector. The Applicant informed the landowner that the only attendance required was for ensuring appropriate gates were opened if locked which we understand the estate manager was able to undertake. As the attendance of a Land Agent at the accompanied site visit wasn't</p>

Ref	Deadline 4 submission	Applicant's comments
		<p>required the Applicant declined to reimburse associated fees and informed the landowner beforehand of the position.</p> <p>The Applicant has committed to reimburse professional fees reasonably and properly incurred in accordance with Royal Institution of Chartered Surveyors (RICS) professional standards. Reasonable fees incurred in the preparation and negotiation of a compensation claim will be paid but where fees are incurred associated with provision of professional services objecting to the DCO then these will not be paid.</p> <p>Please see further comments within reference 2.31.78 above.</p>
	<p>Appendix A Court of Appeal Case Appendix A contains a court appeal submitted against Case No: C1/2014/0666</p>	<p>Please see the response at reference 2.31.11 above.</p>
	<p>Appendix B Rampion Offshore Wind Farm – Chapter 3 Alternatives This Appendix contains a copy of the Rampion Offshore Wind Farm Alternatives Environmental Statement chapter.</p>	<p>The Applicant has no further comments on this section of the submission at this time.</p>

3. References

British Standard Institution, (2014a). *BS 5228-1:2009 + A1:2014 Code of practice for noise and vibration control on construction and open sites. Part 1: Noise*. London: BSI.

Department for Environment, Food and Rural Affairs (Defra), (2010). *Noise Policy Statement for England*. [online]. Available at: <https://assets.publishing.service.gov.uk/media/5a7956e0ed915d0422067947/pb13750-noise-policy.pdf> [Accessed: 09 July 2024].

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Appendix A

Natural England Risk and Issues Log tab

B: Offshore ornithology

Point	Taken from Natural England's Relevant and Written Representations Rampion 2 Appendix B - Offshore and Intertidal Ornithology [RR-265]	RAG Status Rel and WR Rep D1	Consultation, actions, progression	RAG Status at D2	Consultation, actions, progression	RAG Status at D3	Consultation, actions, progression	RAG Status at D4	Applicant's response
B6	Natural England does not agree that the cumulative impact of Rampion 2 and other projects on great black-backed gull across the UK South-west & Channel BDMPS is not significant. A 1.99% increase on baseline mortality is significant in Environmental Impact Assessment (EIA) terms, and the PVA results show that this would severely impact the regional population, resulting in a population 19% smaller than the counterfactual after 30 years. The Applicant has not considered the magnitude of this result. The statement that while the national population is declining, the Isles of Scilly Special Protection Area (SPA) population is increasing, is inaccurate. The results of SPA surveys carried out in 2023 indicate that the Isles of Scilly SPA population has declined by 38% since 2015. While many of the figures presented by other wind farms may be precautionary, the Applicant has not taken into account the fact that the cumulative assessment contains numerous data gaps from older wind farms. We advise this is		No change - additional material on this point was submitted at Deadline 1 which NE will respond to at Deadline 3.		The Applicant has provided further information, which we have provided comments on in Appendix B3. Natural England continues to advise that the impacts of Rampion 2 on great black-backed gull are likely to be significant at the EIA scale when considered cumulatively with other offshore windfarms.		No change		Please refer to the Applicants response to OR2.1 in Table 2-22 in Applicant's Response to ExA Second Written Questions (Document Reference: 8.81) .

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B11	<p>considered further. Natural England disagrees with the Applicant's suggestion that the contribution of Rampion 2 to the cumulative total is small. Rampion 2 contributes 19.8 collisions out of a total of 90.5, and therefore, of the 20 projects listed in the cumulative assessment (of which only 8 have figures available – Table 12-50), Rampion 2 contributes 22%.</p> <p>Natural England does not agree with the Applicant that adverse effect on integrity can be ruled out for Flamborough and Filey Coast SPA due to impacts on guillemot and razorbill in-combination with other projects. We do not accept that the project-alone apportioned impacts are so low that there is not a detectable contribution to the in-combination effect. At the Hornsea 4 Examination, Natural England advised that AEol could not be ruled out for these two species in-combination with other plans and projects, and there is the potential for effects from Rampion 2 to combine with those from projects likely to be submitted in the near</p>		No change - additional material on this point was submitted at Deadline 1 which NE will respond to at Deadline 3.		The Applicant has provided further information, which we have provided comments on in Appendix B3. As set out in our comments, AEOI cannot be ruled out in combination and therefore we advise that an in-principle compensation submission is made. Natural England met with RWE to discuss these comments on the 17/04/2024, we understand that they intend to submit an in-principal compensation proposal.		The Applicant has provided further information within a Guillemot and Razorbill Evidence and Roadmap, which we have provided comments on in Appendix B4. We broadly support the proposed approach and consider it proportionate to the level of risk. We advise that the next key step for the Applicant is to carry out a significant programme of		As presented within Table 7-10 of the Report to Inform Appropriate Assessment [APP-038] (updated at Deadline 5), based on the Applicant's approach to assessment of both auk species the level of impact apportioned to the qualifying auk features of the Flamborough and Filey Coast (FFC) Special Protection Area (SPA) was approximately a single breeding adult per annum. When considering the level of potential effect, likely potential connectivity between the project and the SPA and the favourable status of the two auks at the SPA, the Applicant concluded that the potential for an impact of approximately a single additional breeding adult per annum could confidently be concluded as a non-material contribution to any in-combination assessment. However, the Applicant acknowledged Natural England's request and has undertaken an updated in-combination assessment for the requested sites and features which was originally submitted at Deadline 1 (and updated at Deadline 4) Deadline 4 Submission – 8.25.8 Applicant's Post Hearing Submission –

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	future. Therefore, the effects of Rampion 2 in-combination with other projects should be properly considered, rather than assuming the contribution is not material. A full in-combination assessment of impacts should be presented for guillemot and razorbill for Flamborough and Filey Coast SPA. Natural England should be consulted on the results of this assessment, at which point we can advise on whether AEol can be excluded.						monitoring at the shortlisted sites to establish the current level of disturbance each colony is subject to and to inform what compensation measures are likely to be effective. In terms of the compensation quanta, as with kittiwake we advise that the Plan presents these at ratios of 2:1 and 3:1 rather than just 1:1, and we also seek full detail regarding the calculations for the 'Hornsea 4 method'.		<p>Issue Specific Hearing 1 Appendix 8 – Further Information for Action Point 34 – In Combination Assessment Update for Guillemot and Razorbill [REP4-065]. Feedback was received from Natural England at Deadline 3 [REP3-080], the conclusion of which was they were satisfied that the updated assessments allowed them to provide judgement on the potential for an Adverse Effect on site Integrity (AEol) for the guillemot and razorbill feature of the FFC SPA for the project in-combination with other plans and developments.</p> <p>Natural England's conclusions on the potential for AEol in-combination are presented within their Deadline 3 response [REP3-080].</p> <p>There were some instances where Natural England concluded there was potential for an AEol in-combination with other plans and projects, therefore the Applicant has updated the without prejudice derogation case to include the guillemot and razorbill feature of the FFC SPA (Habitats Regulations Assessment (Without Prejudice) Derogation Case [REP4-014]). Subsequently, the Guillemot and Razorbill Evidence and Roadmap [REP3-060] has been updated for Deadline 5 to include the requested detail on the compensation calculation methodologies and ratios, and a Outline Guillemot and Razorbill Implementation and Monitoring Plan (Document Reference 8.89) has also been submitted on a without prejudice basis.</p>
B12	Natural England does not agree with the Applicant that adverse effect on integrity can be ruled out for the Farne Islands SPA		No change - additional material on this point was submitted at		The Applicant has provided further information, which we have provided comments on in		See comment on B11 above.		Please refer to the response to reference B11 above.

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	<p>due to impacts on guillemot in-combination with other projects. We do not accept that the project-alone apportioned impacts are so low that there is not a detectable contribution to the in-combination effect. Natural England advised Marine Scotland in relation to the Berwick Bank OWF that adverse effects on the Farne Islands SPA could not be ruled out due to impacts on guillemot from that project alone, and other consented /proposed projects could also impact the site. Therefore, there is the potential for effects from Rampion 2 to combine with those from Berwick Bank and other North Sea projects, and this should be properly considered by the Applicant, rather than assuming the contribution is not material. A full in-combination assessment of impacts should be presented for guillemot for the Farne Islands SPA. Natural England should be consulted on the results of this assessment, at which point we can advise on whether AEol can be excluded.</p>		<p>Deadline 1 which NE will respond to at Deadline 3.</p>		<p>Appendix B3. As set out in our comment AEol cannot be ruled out in combination and therefore we advise that an in-principle compensation submission is made. Natural England met with RWE to discuss these comments on the 17/04/2024, we understand that they intend to submit an updated document.</p>				

Appendix B

Natural England Risk and Issues Log tab

C: Marine mammals

Point	Taken from Natural England’s Relevant and Written Representations Rampion 2 – Appendix C – Marine Mammals [RR-265]	RAG Status Rel and WR Rep D1	Consultation, actions, progression	RAG Status at D2	Consultation, actions, progression	RAG Status at D3	Consultation, actions, progression	RAG Status at D4	Applicant’s Response
C1	<p>We have concerns over the definitions used for magnitude and sensitivity. The definitions of sensitivity and magnitude (throughout the Environmental Statement/within the Likely Significant Effect Matrix) could underestimate the likely impacts on marine mammals:</p> <p>a. The definitions of sensitivity have changed between the Preliminary Environmental Information Report (PEIR) and the application. Action: Define what a “significant level” of change is, in the context of the definitions of medium and low sensitivity. Review the sensitivity assigned in the individual impact assessments, and provide robust, transparent justification for the final sensitivity rating.</p> <p>b. There is little distinction between the definitions of low and medium magnitudes, leading to subjective conclusions. Action: The definitions of low and medium magnitude should be made clearer and/or the justification for one chosen magnitude over another should be made more robust in the species-specific assessments.</p> <p>c. Note that the defined terminology for magnitude should be used consistently throughout the document. The Applicant has not defined “negligible” magnitude and so this term should not be used in the assessment.</p>		No change		No change		No change		Please see response to MM 2.4 above.
C7	<p>The Applicant has not provided a Vessel Management Plan (VMP) but is relying on the VMP and mitigation measures therein in their assessment conclusions. Action: Provide an outline Vessel Management Plan. The VMP should include best practice</p>		In lieu of a VMP, the Applicant has provided a “Proximity to Wildlife” document. The Applicant		The DCO condition has been updated so that the Vessel Management Plan (VMP) will incorporate the		No change		Please refer to MM2.6 above.

Point	Taken from Natural England’s Relevant and Written Representations Rampion 2 – Appendix C – Marine Mammals [RR-265]	RAG Status Rel and WR Rep D1	Consultation, actions, progression	RAG Status at D2	Consultation, actions, progression	RAG Status at D3	Consultation, actions, progression	RAG Status at D4	Applicant’s Response
	<p>measures to reduce the risk of seals flushing due to vessel disturbance. Disturbance to seal haul out sites and landfall can occur during the operation and maintenance (O&M) phase too. This should be acknowledged in the assessment, and the Applicant should clearly commit to following the VMP during the O&M phase to reduce this risk.</p>		<p>states that this document “will form part of the Vessel Management Plan”, which we infer will be produced post-consent, to comply with the DCO conditions. We advise it is not clear how this commitment (to develop parts of the VMP in line with the Proximity to Wildlife document) will be secured. Whilst the Proximity to Wildlife document includes some measures, it is stated that “A comprehensive code of conduct for vessel operators will be developed” (Section 3.2.3). We therefore infer that this document is an outline, and a further document will be created post-consent. We advise that it should be secured that Natural England will be consulted on the</p>		<p>Working in Proximity to Wildlife document, which Natural England welcome (Schedules 11 and 12 of the draft DCO, Condition 11(1)(f)). Natural England notes that the document states that is applicable to all phases of development, including construction, operation, maintenance and decommissioning. Natural England interprets this to mean that the VMP will be in place, applicable and enforced to all phases of development. This is due to the important ecological mitigations for marine mammal species within the protocol. We seek assurance that the Applicant and regulators also consider this to be the position with regard to this important mitigation document. Providing such assurance, would close out this issue.</p>				

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C10	We are concerned that not all relevant projects have been included in the CEA for harbour porpoise disturbance. Table 11-37 presents less than half of the projects listed in Table 11- 35, and at a glance some of		<p>follow-on document that is produced post-consent. We advise that the measures listed in the outline document thus far are appropriate for an outline document. We note that a key measure (minimum distance) to reduce disturbance to seal haul outs is included. We note that the document lists relevant guidance (e.g. MWWC), and states that any new guidance will be incorporated to later revisions. It is also stated that the code of conduct will reduce risk “throughout all phases of the Project.” We have no further comments on the content of this document.</p>		<p>Natural England should be consulted on the VMP that is developed.</p> <p>No change</p>		<p>No change. Please also see our response to question Q3d-1 of [PD-011].</p>		<p>The Applicant confirms there was an error in Table 11-37 in Chapter 11: Marine mammals, Volume 2 of the Environmental Statement (ES) [APP-052] in the version submitted in the</p>

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	<p>the omitted projects are in non-UK parts of the North Sea so should be in the relevant MU for harbour porpoise. The projects taken forward to the CEA should be reviewed to ensure it captures all the relevant ones, and that the impact presented (in terms of percentage of the MU affected) is correct. The Applicant should review the projects taken forward to the CEA for harbour porpoise and update the assessment if necessary We are unable to agree with the conclusions of the assessment at this stage.</p>		<p>consider that the list of projects appears complete. The impact from the updated list has been revised; it is now 45,897 animals (13.2% of the MU), where previously it was 30,850. We advise that this number is higher than the number modelled by Booth et al. (2017) (34,396), which the Applicant uses as evidence of low likelihood of population-level effects (in paragraph 11.12.25). Therefore, we advise that the Applicant needs to provide further evidence that this higher number of animals impacted would not affect the overall harbour porpoise population trajectory.</p>						<p>ES, and that some non-UK projects and Scottish projects in the cumulative effects assessment (CEA) longlist that are located in the North Sea Management Unit were omitted from the harbour porpoise CEA when it was updated prior to DCO Application.</p> <p>The projects missing from the porpoise CEA are: 8 Scottish projects, 1 Belgian project, 3 French projects, 6 Dutch projects, 2 Norwegian projects, 2 Danish projects and 7 German projects.</p> <ul style="list-style-type: none"> The Applicant provided a revised cumulative effect assessment for the harbour porpoise North Sea management unit (MU) at Deadline 1. This has been incorporated into the updated Chapter 11: Marine mammals, Volume 2 of the ES [REP4-020] (updated at Deadline 5). The Applicant has provided further evidence as to why the higher number of animals predicted to be impacted in the Applicant’s updated CEA for harbour porpoise in Chapter 11: Chapter 11: Marine mammals, Volume 2 of the ES [REP4-020] (updated at Deadline 5) does not have a population-level effect in Deadline 3 Submission – 8.54 Applicant’s Responses to Examining Authority’s First Written Questions (ExQ1) [REP3-051]. Natural England in their Deadline 4 Submission – Appendix N4- Natural England’s Response to

Point	Taken from Natural England’s Relevant and Written Representations Rampion 2 – Appendix C – Marine Mammals [RR-265]	RAG Status Rel and WR Rep D1	Consultation, actions, progression	RAG Status at D2	Consultation, actions, progression	RAG Status at D3	Consultation, actions, progression	RAG Status at D4	Applicant’s Response
C14	The Rampion 2 project now overlaps with the updated Coastal West Channel Management Unit (CWC MU) for bottlenose dolphin (see the March 2023 update to the MU document). The Applicant should update assessment of bottlenose dolphin so that it reflects the recent change in distribution of bottlenose dolphin that is reflected in the CWC MU boundary extension. Specifically, the Applicant should review and update the population abundance and density in the area. One		No change		The Applicant has updated the baseline as requested. We do not have any further comments on the baseline. Following this the Applicant has revised their impact assessment using the updated baseline.		No change		<p>the Examining Authority’s Request for Further Information from Natural England arising out of Issue Specific Hearing 2 [REP4-097] stated they do not agree with the rationale in the Applicants response to reference MM 1.6 in Deadline 3 Submission – 8.54 Applicant’s Responses to Examining Authority’s First Written Questions (ExQ1) [REP3-051].</p> <ul style="list-style-type: none"> The Applicant provided an additional response to Natural England on the harbour porpoise CEA in Applicant Response to Deadline 4 Submission NE Appendix N4 ISH2 (Document Reference: 8.84). <p>Please refer to MM2.2 in Table 2-1 above.</p> <p>The Applicant has provided an updated Chapter 11: Marine mammals, Volume 2 of the ES [REP4-020] (updated at Deadline 5) with an amended CEA.</p> <p>The key change since the drafting of Appendix 11.1: Marine mammal baseline technical report, Volume 4 of the Environmental Statement (ES) [APP-147] is the change in the bottlenose dolphin Management Units. At the time of writing the baseline, Rampion 2 was located within the Offshore Channel and SW England Management Unit. The boundary of the Coastal West Channel Management Unit was</p>

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	<p>approach to calculating density, which we suggest the Applicant presents, is to assume uniform density of bottlenose dolphin in the extended CWC MU.</p>				<p>However, Natural England do not currently agree with the assessment conclusions that the impacts on bottle-nosed dolphin will not be significant, and advise that further assessment and consideration of mitigation is needed.</p> <p>Please see our [Appendix C3] for further details.</p>				<p>revised by the IAMMWG in 2023 (after the baseline was finalised). Rampion 2 is now located partly within both the new boundary of the Coastal West Channel Management Unit and the Offshore Channel and SW England Management Unit. Impacts from the Project therefore cross into the 2 Management Units. Assuming the reference population is updated to be the combined MUs, this results in a reference population of: 40 dolphins from CWC + 10,653 dolphins from OCSW = 10,693 bottlenose dolphins. This is almost the same as the reference population size used in the ES assessment Chapter 11: Marine mammals, Volume 2 of the ES [APP-052] which was 10,497 dolphins, and thus is not considered to be significantly different. No changes to the magnitude of any impact pathway would occur when considering the new reference population size. The Applicant has submitted an updated baseline for bottlenose dolphin in Deadline 2 Submission 8.42.1 Applicant’s Response to Action Points Arising from Issue specific Hearing: Marine Mammals [REP2-019].</p> <p>Natural England submitted their response to the updated baseline in Deadline 3 Submission – Appendix C3 – Natural England’s Advice on 8.42.1 Applicant’s Response to Action Points Arising from Issue specific Hearing: Marine Mammals [REP3-081].</p>

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C24	<p>The number of piles and pile locations per day needs to be clarified. In the text the Applicant has stated that up to 2 monopiles and 4 pin piles may be installed in a 24-hour period (Section 3.2.2). However, the Applicant appears to have modelled simultaneous and sequential piling occurring within a 24-hour period (Tables 4-31 and 4-33). If both sequential and simultaneous piling is within the envelope, then theoretically up to 4 monopiles or 8 jacket pin piles could be installed in a 24-hour period (and indeed this is what is stated as the worst-case scenario in Appendix 11.2). The worst-case piling scenario in a 24-hour period must therefore be clarified, modelled and used consistently. It should also be clarified whether a maximum of 2 locations may be installed in a 24-hour period. In addition, the worst-case spatial extent of the noise impact (particularly for disturbance) requires review. We query whether the east and west locations are the worst-case in terms of spatial extent of underwater noise impact, given that the worst-case propagation occurs at the South</p>		No change		No change		No change		<p>In response to ISH2 action point 22, the Applicant has submitted additional population (iPCoD) modelling for bottlenose dolphin at Deadline 5 Applicant’s Response to Action Points Arising from ISH 2 and CAH1 for Deadline 5 (Document Reference: 8.90). The results of the modelling show that survival and reproductive rates are very unlikely to be impacted to the extent that the population trajectory will be altered. This results in a minor (not significant) impact.</p> <p>The Worst-Case Scenario for spatial impacts is 2 concurrent monopiles in a 24-hour period at the E and W modelling locations in the array area as stated in Section 4 of Appendix 11.3 Underwater noise assessment technical report, Volume 4 of the Environmental Statement (ES) [APP-149] (updated at Deadline 5). The Worst-Case Scenario for the number of piles is 360 pin piles for wind turbine generators (WTGs) and 36 pin piles for the Offshore Substations, this results in a total of 396 pin piles and 99 piling days with 4 pin piles per day as stated in the maximum design scenario (MDS) Table 11-13 of Chapter 11: Marine mammals, Volume 2 of the ES [REP4-020] (updated at Deadline 5).</p> <p>The Applicant submitted an update to Table 11-13 of Chapter 11: Marine mammals, Volume 2 of the ES [REP4-020] at Deadline 4 for clarity. The Applicant has also responded to action point 21 in Applicant’s</p>

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	and East locations (Section 4). Should this instead be South and East (or another location)? This may make a difference to the noise impacts that occur over larger spatial scales (e.g. disturbance assessment using noise contours). The Applicant should ensure that the worst-case spatial extent for noise impacts from simultaneous piling has been modelled, and update the assessments if necessary.								Responses to Action Points Arising from ISH2 and CAH1 [REP4-074] explaining the Worst-Case Scenario.
C33	<p>We have several concerns regarding the MMMP:</p> <p>The acoustic deterrent device (ADD) duration is typically based on the permanent threshold shift (PTS) range. If the impact range is not presented for simultaneous piling, we query how an appropriate ADD duration can be calculated. The Applicant should consider this. The ADD is an important part of the mitigation measures and an appropriate duration is needed to demonstrate that its usage can reduce impacts to acceptable levels. The Applicant should present an approach to determining appropriate ADD duration for simultaneous piling.</p> <p>The MMMP should explicitly outline the soft start/ramp up procedure that has been modelled as the worst-case, and commit to not exceeding this soft start/ramp up profile. This will ensure that the worst-case impact ranges are not exceeded. Furthermore, the Joint Nature Conservation Committee (JNCC) guidelines for piling mitigation (https://data.jncc.gov.uk/data/31662b6a-19ed-4918-9fab-8fbcff752046/JNCC-CNCB-Piling-protocol-August2010-Web.pdf) state that the soft start should be a minimum of 20 minutes. It is therefore not appropriate to have a soft start that is 7.5 minutes. The terminology used should</p>		No change		No change		<p>In reference to Document [REP3-051] 8.54 - Applicant's Responses to Examining Authority's First Written Questions (ExQ1), specifically Table 2-22 Marine Mammals, Ref MM 1.8, Paragraph 4 of the Applicant's Response. For clarification, Natural England advises that the acoustic deterrent device (ADD) duration is based on the time needed for animals to flee the cumulative PTS zone, not the instantaneous PTS zone as stated by the Applicant in their response here. In their Marine Mammal Mitigation Plan</p>	<p>The Applicant highlights that there is no accepted definition for how to define a permanent threshold shift (PTS) range for multiple simultaneous piling locations. Where an acoustic deterrent device (ADD) could theoretically cause fleeing towards a second piling location, this cannot be mitigated for by an ADD at the second location. Therefore, the ADD duration for simultaneous piling has not been presented.</p> <p>The Applicant has presented the ADD duration for the cumulative PTS zone in the Deadline 4 Submission – 7.14 Draft Piling Marine Mammal Mitigation Protocol (Revision B) [REP4-051].</p> <p>This extended duration of ADD activation is likely to cause significant levels of disturbance and is therefore not considered to be a feasible mitigation option.</p> <p>The Applicant has committed to Double Big Bubble Curtains (DBBC) throughout the piling campaign (Commitment C-265) as a form of Noise Abatement System (NAS) (as</p>	

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	<p>match that in the guidelines and clearly demonstrate that the guidelines are being adhered to.</p> <p>We welcome the inclusion of at-source noise abatement methods in the draft MMMP, however, there is limited evidence on the noise reduction of various systems and their efficacy in the environmental characteristics of the site that may affect their deployment. We advise that the Applicant give due consideration to the uncertainties that exist regarding the levels of abatement that such measures might reach in the environmental conditions at the Rampion 2 site, such as the strength of the currents.</p>						<p>(MMMP), the Applicant has presented the ADD durations needed for animals to flee the cumulative PTS zone (as well as instantaneous), therefore we inferred that the final duration of ADD activation had the option of being based on the cumulative PTS, which is what we would advise. We advise that we disagree that ADDs are not used to mitigate exposure to noise levels that could cause cumulative PTS. Therefore our point regarding appropriate ADD duration for simultaneous piling, based on cumulative PTS ranges, is outstanding.</p>		<p>explained below), this will reduce the potential for cumulative PTS risk to negligible. The ADD durations will be confirmed in the final piling MMMP submitted at the post-consent stage. This will be based on the underwater noise modelling using the post-consent piling parameters with DBBC applied.</p> <p>As stated in Deadline 4 Submission – 7.14 Draft Piling Marine Mammal Mitigation Protocol (Revision B) [REP4-051], the Applicant would like to highlight that studies have demonstrated that the Lofitech ADD resulted in significant deterrence of harbour porpoises up to 7.5 km away and all observed porpoises avoiding the seal scarer within 1.9 km (Brandt, 2013a; Brandt 2013b). At present, there is no evidence to suggest that extending the period that the ADD is activated would exponentially extend the deterrence range. Therefore, the Applicant does not believe there is sufficient evidence to support Natural England’s advice on using ADDs to mitigate against the larger cumulative PTS impact ranges, rather, it is more likely that extended durations of ADD operation would result in adding unnecessary noise into the marine environment.</p> <p>The Applicant confirms that both the soft start/ramp-up will be detailed in the final Piling MMMP, which is to be submitted to be approved in writing by the Marine Management Organisation (MMO) as secured in Condition 11(1)(l) of the draft deemed Marine</p>

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									<p>Licences (dMLs) (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] updated at Deadline 5).</p> <p>The Applicant has undertaken additional work to provide a comparison of the environmental conditions at the Proposed Development with other projects where NAS have been deployed. This was submitted in Deadline 4 Submission – 8.40 Information to support efficacy of noise mitigation / abatement techniques with respect to the site conditions at Rampion 2 Offshore Windfarm Revision A [REP4-067].</p> <p>The Applicant has also committed to the use of a DBBC (Commitment C-265). The DBBC will be deployed as the minimum single offshore piling 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:</p> <ul style="list-style-type: none"> • sensitive receptors at relevant Marine Conservation Zone (MCZ) sites and reduce the risk of significant residual effects on the designated features of these sites; • spawning herring; and • marine mammals. <p>This is detailed within the Deadline 4 Submission – 7.17 In Principle Sensitive Features Mitigation Plan</p>

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									Revision D [REP4-053] , the final version of which will be submitted to and approved in writing by the MMO as secured in Condition 11(1)(k) of the draft dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] updated at Deadline 5).
Documents Used: 7.18 Offshore in Principle Monitoring Plan									
C40	Currently the only post-consent monitoring that has been proposed is the industry-standard monitoring of underwater noise from the first 4 piles. Whilst the Applicant refers to the Marine Mammal Mitigation Plan (MMMP) there is no consideration of monitoring the effectiveness of the mitigation measures in reducing the impacts to acceptable levels.		No change		No change		No change		<p>The Applicant submitted an updated Offshore In Principle Monitoring Plan [REP4-056] at Deadline 4 in which they have updated the noise monitoring commitment to monitor four of the first 12 piled foundations installed.</p> <p>Additionally, the Applicant has committed to using Double Big Bubble Curtains (DBBC) for all piled foundations installations. In the Offshore In Principle Monitoring Plan [REP4-056], the Applicant has committed to collecting data to validate the performance of the DBBC and the efficacy of it as a form of NAS. Information will be gathered and processed in accordance with UK Noise Registry requirements, if appropriate at the time of construction. Noise monitoring data will be recorded, and results will be Marine Management Organisation (MMO).</p>
Mitigation Summary									
C41	The embedded environmental measures outlined by the Applicant (in Table 11-14 in the ES Chapter 11 Marine Mammals) should be secured in the DCO/dML.		No change		The Applicant has responded on this point, clarifying where the measures are		No change		The Applicant confirms that commitment C-51 is secured in Condition 11(1)(f) of the draft deemed Marine Licences (dMLs) (Schedules

Point	Taken from Natural England’s Relevant and Written Representations Rampion 2 – Appendix C – Marine Mammals [RR-265]	RAG Status Rel and WR Rep D1	Consultation, actions, progression	RAG Status at D2	Consultation, actions, progression	RAG Status at D3	Consultation, actions, progression	RAG Status at D4	Applicant’s Response
	<p>Specifically: C-51 (Vessel Management Plan) – this should be secured for all phases of the project, C-52 (piling Marine Mammal Mitigation Plan), C-102 (UXO Clearance Marine Mammal Mitigation Protocol). We note that the Table 11-14 details that C-51 and C-52 will be secured in the DCO or dML conditions. C-102 will be secured through the application for UXO clearance works marine licence. Natural England query whether this secures that the final MMMP will be in accordance with the Draft MMMP submitted with this Application. There are also two other commitments Natural England strongly support in Table 11-14 and welcome the proposal to secure these in the dML: C-265 (piling noise mitigation technology), C-275 (low order detonations).</p>				<p>secured in the DCO/dML. Natural England has an outstanding concern noted in point C7 above. We note that, in the draft dMLs (Schedules 11 and 12 of the draft DCO, Condition 11(1)(m)), it is stated that the UXO MMMP will accord with the draft UXO MMMP, rather than the draft piling MMMP, which we agree with. We advise that this is consistently updated to close out this issue.</p>			<p>11 and 12 of the Draft Development Consent Order [REP4-004]. The Draft Development Consent Order [REP4-004] (updated at Deadline 5) has been updated to confirm that, whilst submitted pre-construction, the Vessel Management Plan (VMP) must cover the operational lifetime of the authorised scheme.</p> <p>The Applicant confirms that commitment C-52 is secured in Condition 11(1)(l) of the draft dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] [REP4-004] (updated at Deadline 5), should driven or part-driven pile foundations be used.</p> <p>The Applicant confirms that commitment C-102 is secured in Condition 11(1)(m) of the draft dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] updated at Deadline 5).</p> <p>The Applicant also confirms that when the Marine Licence for unexploded ordnance (UXO) clearance works application is made, should this be required, the final UXO Clearance MMMP will be drafted in line with the Draft Unexploded Ordnance Clearance Marine Mammal Mitigation Protocol [APP-237] (MMMP) submitted with the Application for the Proposed Development.</p> <p>The Applicant confirms there was an error in the response provided to Natural England on this point in Deadline 1 Submission – 8.24</p>	

Point	Taken from Natural England’s Relevant and Written Representations Rampion 2 – Appendix C – Marine Mammals [RR-265]	RAG Status Rel and WR Rep D1	Consultation, actions, progression	RAG Status at D2	Consultation, actions, progression	RAG Status at D3	Consultation, actions, progression	RAG Status at D4	Applicant’s Response
									<p>Applicant’s Responses to Relevant Representations [REP1-017] where the text incorrectly referred to the Draft Piling Marine Mammal Mitigation Protocol [APP-236] being updated as part of the Marine Licence Application for UXO clearance works. The Applicant has corrected this in the draft dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5)), Condition 11(1)(m)). The dML now states that the UXO MMMP will accord with the draft UXO MMMP, rather than the draft piling MMMP.</p> <p>The Applicant notes that, should driven or part-driven pile foundations be used, the use of Double Big Bubble Curtains (DBBC) (Commitment C-265) will be deployed as the minimum single offshore piling 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:</p> <ul style="list-style-type: none"> • sensitive receptors at relevant Marine Conservation Zone (MCZ) sites and reduce the risk of significant residual effects on the designated features of these sites; • spawning herring; and • marine mammals. <p>This is detailed within the Deadline 4 Submission – 7.17 In Principle</p>

Point	Taken from Natural England’s Relevant and Written Representations Rampion 2 – Appendix C – Marine Mammals [RR-265]	RAG Status Rel and WR Rep D1	Consultation, actions, progression	RAG Status at D2	Consultation, actions, progression	RAG Status at D3	Consultation, actions, progression	RAG Status at D4	Applicant’s Response
									<p>Sensitive Features Mitigation Plan Revision D [REP4-053], the final version of which will be submitted to and approved in writing by the MMO as secured in Condition 11(1)(k) of the draft dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5).</p> <p>The Applicant notes that should UXO clearance be required, the use of low order methods to dispose of UXOs using deflagration will be used where practicable (Commitment C-275) (as secured in Condition 11(1)(m) of the draft dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] updated at Deadline 5).The use of low order will be detailed in the Marine Licence application for UXO Clearance.</p>

Appendix C

Natural England Risk and Issues Log tab

E: Fish and shellfish ecology

Point	Taken from Natural England's Relevant and Written Representations Rampion 2 Appendix E - Fish and Shellfish Ecology [RR-265]	RAG Status Rel and WR Rep D1	Consultation, actions, progression	RAG Status at D2	Consultation, actions, progression	RAG Status at D3	Consultation, actions, progression	RAG Status at D4	Applicant's Response
E1	We note that Natural England's advice letter of the 14/07/2023, based on the Targeted meeting - Underwater Noise and Impacts on Fish Receptors, 30/03/2023, has been omitted. This letter contains key advice on outstanding issues and concerns in relation to black seabream as highlighted in the summary at the start of this section. We advise this document is updated to include consideration of our advice of the 14/07/2023.		No change		No change		No change		<p>The Natural England advice letter was submitted with the Application within the Evidence Plan (Part 10 of 11) [APP-252].</p> <p>The Applicant reviewed the advice letter received from Natural England on the 14 July 2023, and acknowledges the key concerns raised. The advice letter was received in July, after the drafting of the In Principle Sensitive Features Mitigation Plan [APP-239], and therefore the Plan was not updated to include Natural England's feedback at Deadline 1. The Applicant has instead provided a response to Natural England to address the content of the letter below.</p> <p>Since Deadline 1, the Applicant has maintained their position that the proposed mitigation measures as detailed in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5) will ensure no hindrance to the conservation objectives of the Kingmere MCZ. The Applicant maintains their position that a full piling restriction from 1 March to 31 July (as recommended by Natural England) is disproportionate to the risk of an impact arising that could result in significant population level effects on nesting black bream. The Applicant reiterates that a full piling exclusion from March-July inclusive would also have significant issues for the practical development of the Proposed Development. The Applicant has proposed various mitigation measures during the black bream nesting season from March through to July. These measures include the use of noise abatement systems (DBBC and another noise abatement measure), a sequencing approach to piling starting in locations furthest from the MCZ, and the definition of piling exclusion zones (as detailed in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), the delivery of which secured in Condition 11(1)(k) of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order (DCO) [REP4-004] (updated at Deadline 5)). Through the application of a variety of mitigation measures during the nesting season, the Applicant is confident that piling operations will not hinder the Kingmere MCZ conservation objectives.</p> <p>On request of the Examining Authority and Natural England, on a without prejudice basis options for Measures of</p>

Point	Taken from Natural England's Relevant and Written Representations Rampion 2 Appendix E - Fish and Shellfish Ecology [RR-265]	RAG Status Rel and WR Rep D1	Consultation, actions, progression	RAG Status at D2	Consultation, actions, progression	RAG Status at D3	Consultation, actions, progression	RAG Status at D4	Applicant's Response
									<p>Equivalent Environmental Benefit (MEEB) were detailed in Without Prejudice Measures of Equivalent Environmental Benefit (MEEB) Review for Kingmere Marine Conservation Zone [REP4-078]. Kingmere Marine Conservation Zone (MCZ) Without Prejudice Stage 2 MCZ assessment [REP4-071] was also submitted at Deadline 4. The options presented in the Without Prejudice MEEB Review are being discussed with Natural England and will inform a without prejudice implementation and monitoring plan. The Applicant also submitted Schedule 18 - Measures of Equivalent Environmental Benefit (on a without prejudice basis) [REP4-081], which can be included in the DCO in the event that the Secretary of State concludes that, notwithstanding the information presented by the Applicant, such measures are necessary to be secured.</p> <p>Since Deadline 1, Natural England have maintained their position, that there is insufficient evidence available to support a suitable threshold to mitigate against impacts to black seabream. The Applicant maintains their position that a threshold of 141 dB SELss is a suitably precautionary disturbance threshold for black seabream, as it is based on a short-lived startle response observed in sea bass. As informed by Popper <i>et al.</i>, (2014), behavioural disturbances are considered to be long term changes in behaviour and distribution, and should not include effects on single animals, or small changes in behaviour such as startle responses or minor movements. Further to this, the approach used by the Applicant to define a suitable threshold for disturbance from underwater noise aligns with that used in other OWF applications and assessments (e.g. Hornsea Four Offshore Wind Farm Application (Ørsted, 2021) Hornsea Project Three Offshore Wind Farm Application (Ørsted, 2018), Sheringham and Dudgeon Extension Offshore Wind Farm Projects Application (Equinor, 2022) Awel y Môr Offshore Wind Farm Application (RWE, 2023)) and therefore complies with current practice when approaching issues such as scientific data gaps and uncertainties, in order for consenting decisions to be made.</p> <p>In the ExA first Written Questions (3rd April 2024), the ExA queried the effects on mitigation if 135 dB threshold was</p>

Point	Taken from Natural England's Relevant and Written Representations Rampion 2 Appendix E - Fish and Shellfish Ecology [RR-265]	RAG Status Rel and WR Rep D1	Consultation, actions, progression	RAG Status at D2	Consultation, actions, progression	RAG Status at D3	Consultation, actions, progression	RAG Status at D4	Applicant's Response
E6	We note that there are inconsistencies between the worst-case scenario presented here in terms of piling and in Appendix 11.3, particularly in relation to the maximum duration of piling. These inconsistencies exist across all areas of the project and must be rectified. We advise that the assessment is updated to ensure the worst case is consistently presented across all the relevant documents.		No change		No change		No change		<p>adopted. The Applicant set out the implications on mitigation measures for black seabream as defined using the 135 dB threshold (for behavioural responses) in Appendix K FS of Applicant's Responses to Examining Authority's First Written Questions (ExQ1) [REP3-051]. At Deadline 4, the Applicant submitted disturbance impact ranges as defined using the 135 dB threshold (the use of which the Applicant does not support) and taking account of the commitment to use a DBBC during all piling campaigns, in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5)].</p> <p>The Applicant confirms that site specific ambient noise surveys, to inform a suitable target for noise abatement mitigation to achieve were undertaken in 2022 and 2023. These are detailed further in Appendix 8.3 - Underwater noise study for sea bream disturbance [REP2-011] and Appendix 8.4: Black Seabream Underwater Noise Technical Note and Survey Results, Revision A, Volume 4 [PEPD-023] respectively.</p> <p>The Applicant also acknowledges the inconsistency in terms of piling durations and confirms this has been corrected to "4.5 hours piling per pile" in the Errata submitted at Pre-Examination Procedural Deadline. Table 8-12 of Chapter 8: Fish and shellfish ecology, Volume 2 [APP-049] has been updated at Deadline 5. The Applicant confirms that a piling duration of 4.5 hours was used to inform the assessment of impacts from underwater noise on fish and shellfish receptors in Chapter 8: Fish and shellfish ecology, Volume 2 [APP-049] (updated at Deadline 5).</p> <p>The Applicant confirms that the following scenarios were modelled to inform the underwater noise assessments for fish, marine mammals and the marine conservation zone assessment.</p> <ul style="list-style-type: none"> Monopile foundations (13.5 m diameter) <ul style="list-style-type: none"> – single pile, - 2 sequentially installed piles. • Jacket foundation (4.5 m diameter)

Point	Taken from Natural England's Relevant and Written Representations Rampion 2 Appendix E - Fish and Shellfish Ecology [RR-265]	RAG Status Rel and WR Rep D1	Consultation, actions, progression	RAG Status at D2	Consultation, actions, progression	RAG Status at D3	Consultation, actions, progression	RAG Status at D4	Applicant's Response
									<ul style="list-style-type: none"> - single pile, - 4 sequentially installed piles <ul style="list-style-type: none"> • Monopile/jacket foundation modelling using Hawkins <i>et al.</i> (2014) <p>Multiple Locations (E and W Locations):</p> <ul style="list-style-type: none"> • Monopile foundations (13.5 m diameter) <ul style="list-style-type: none"> - single pile installed simultaneously, - 2 sequentially installed piles installed simultaneously at both E and W Locations. • Jacket foundation (4.5 m diameter) <ul style="list-style-type: none"> - single pile installed simultaneously at both E and W Locations., - 4 sequentially installed piles installed simultaneously at both E and W Locations. <p>The modelling outputs from the sequential installation of 4 jacket piles at the East and West locations in the array area are presented in Table 4.37 of Appendix 11.3: Underwater noise assessment technical report, Volume 4 [APP-149] (updated at Deadline 5). The Applicant confirms that the descriptions of Figure 4.9 and Table 4.37 of Appendix 11.3: Underwater noise assessment technical report, Volume 4 [APP-149] (updated at Deadline 5), should refer to the sequential installation of four jacket piles at the East and West locations, rather than the simultaneous monopile installation scenario. This clarification will result in no impact on the outcome of the assessment of underwater noise impacts. The captions of Figure 4.9 and Table 4.37 have been revised in an update to Appendix 11.3: Underwater noise assessment technical report, Volume 4 [APP-149] submitted into Examination at Deadline 5.</p> <p>The maximum design scenario for stationary fish receptors will be the sequential installation of four pin piles, at two locations (East and West locations in the array area) within a 24 hour period. When the receptor is presumed to remain stationary, this will create a total area of ensonification that is greater than the simultaneous installation of two monopiles.</p>

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E7	We note that for the interconnector cable the 'maximum rock protection area for interconnector cables (based on 20% of 10km cable requiring protection) = 122,000m ² '. However, we note in the project description chapter the length of cables is 40km rather than 10km. We advise this is corrected and the assessment updated as necessary.		No change		No change		No change		<p>This is different to the fish and marine mammal fleeing model, where the monopile scenario introduces more sound energy to the water more quickly, while the receptor remains relatively close to the pile. By the time the third and fourth pin piles are driven, the fleeing animal is much further from the pile and so the additional exposure this causes to the total is small. Table 11-13 of Chapter 11: Marine Mammals, Volume 2 [REP4-020] (updated at Deadline 5) has been revised to provide additional clarity on the maximum design scenario used to inform the assessment. This was submitted into Examination at Deadline 4. Table 8-12 of Chapter 8: Fish and shellfish ecology, Volume 2 [APP-149] will be updated at Deadline 5.</p> <p>The underwater noise impact contours have been presented relative to the MCZs which have fish and shellfish qualifying features within the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5) and the Appendix 9 - Further information for Action Pints 38 and 39 - Underwater Noise [REP4-061].</p> <p>The Applicant is firmly of the belief that they have submitted everything to address this issue, furthermore, the Applicant confirms that none of the changes detailed above, trigger the need to amend or update the assessment.</p> <p>The Applicant acknowledges this inconsistency and confirms this has been corrected to "40 km" in the Errata submitted at Pre-Examination Procedural Deadline. Chapter 8: Fish and shellfish ecology, Volume 2 [APP-149] has been updated at Deadline 5. Furthermore, the Applicant confirms that this amendment has no effect on the outcome of the assessment as presented in Chapter 8: Fish and shellfish ecology, Volume 2 [APP-149] (updated at Deadline 5).</p>
E8	We advise that this table includes a line stating the figure number for the model of each of		No change		No change		No change		The Applicant directs the Examining Authority to the Applicant's response to ref E6 above.

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	<p>these scenarios. We advise all models need to include the boundaries of the MCZs for us to be able to understand the impacts on MCZ features. We note that Appendix 11.3 only models the following scenarios in relation to fish: Single location: • Worst-case monopile foundation – single pile • Worst-case monopile foundation – 2 sequentially installed piles Worst-case jacket foundation - single pile • Worst-case jacket foundation – 4 sequentially installed piles • Worst-case monopile/jacket foundation modelling using the Hawkins et al. (2014) Multiple Locations (2 locations): • Single monopile – installed simultaneously both E and W Locations • 2 sequentially installed monopiles – installed simultaneously at both E and W Locations • Single jacket pile – installed simultaneously at both E and W Locations • 2 sequentially installed jacket piles- installed simultaneously at both E and W Locations (noting the table refers to jacket piles, but the descriptions on figure 4.9 and table 4.37 refer to monopiles, one of which is incorrect) With regards to piling at multiple locations, only the impacts of 2 sequentially installed piles at two different locations at one time has been modelled. Therefore, it is unclear why Table 8.17 refers to more than</p>								

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	four piles being installed simultaneously at the East and West locations. The spatial worst case appears to relate to Table 4.37 of Appendix 11.3. We advise explanation is provided on how 2 pin piles piled at the same time which require up to 2500kj hammer energy can create a greater worst-case scenario than 2 monopiles being piled at the same time with up to 4400kj hammer energy. We advise that clarity is provided on the worst-case scenario being presented and demonstration that this has been modelled.								
E10	Natural England defer to the advice of Cefas but based on the overlap with the Downs herring spawning ground (IHLS larval abundance data) shown in the Figures document, it seems unlikely to be appropriate that the magnitude of impact has been assessed as negligible for both TTS and behavioural impacts. We advise that you refer to the advice of Cefas on this matter, but Natural England highlight that the magnitude assign needs to be reviewed based on the IHLS data and that it is likely mitigation will be required.		Additional material pertaining to herring was submitted at Deadline 1 which NE will respond to at Deadline 3.		Natural England defers to MMO/Cefas with regards to the aspects of the new material that relate to herring.		No change		Please refer to response FS2.5 in Table 2-1 above.
E11	We note that 'A site-specific geophysical survey was		No change		No change		No change		As requested in an advice note from Natural England (20 May 2022), the timings and spatial limitations of the geophysical

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	<p>undertaken between July and August 2020'. As Natural England have raised throughout the evidence plan process this only overlaps with the end of the spawning season for black seabream. Any data collected in August falls outside of the spawning season. The 'Site-specific benthic grab and drop-down video (DDV) surveys were also undertaken between December 2020 and February 2021', far outside of the black seabream season. Natural England therefore disagree that this information can be relied upon 'to supplement existing data on likely black seabream nesting locations in areas relevant to the Proposed Development, but outside of areas previously subject targeted survey (principally within the Kingmere MCZ)', given the timing of the surveys. Natural England disagree that the data sets referred to 'allows a conclusion to be drawn that nests are likely to be present across a discrete area of the export cable corridor, and as such demonstrates the data to be representative and robust for the purposes of EIA'. We advise there is also no evidence presented to justify the statement 'that the assessment takes a precautionary approach'. Natural England advises that the aggregates data is spatially discrete and</p>								<p>surveys have been recognised in Section 8.5 in Chapter 8: Fish and shellfish ecology, Volume 2 [APP-049] (updated at Deadline 5).</p> <p>Principal densities and aggregations of black bream nesting sites will be mapped in the Final Sensitive Features Mitigation Plan, utilising historic desk studies, survey data drawn from the aggregates industry surveys, geophysical survey data for the export cable corridor carried out in 2020 and the pre-construction data that will be collected post-consent. The final mitigation plan will be provided post-consent once project parameters are finalised (as secured in Condition 11(1)(k) of the dMLs (Schedules 11 and 12 of the draft DCO [REP4-004] (updated at Deadline 5)).</p> <p>It should be noted that the provisions detailed within the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5) provide for the mitigation of impacts to known and, with regards to the commentary on the timings of the baseline survey, currently unknown bream nest locations. Based on the survey data listed above, notably with the inclusion of the pre-construction survey data informing 'unknown' nesting areas, mitigation in the form of cable micrositing will ensure that direct impacts to black seabream nesting areas will be avoided as far as practicable. As also described in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), installation methodologies can also be adapted where required to ensure indirect impacts do not pose a risk of significant effect to spawning habitats for the species and further, that direct impact (impact footprint) reduction can be achieved, for example in areas where bream may nest but which are not represented in the available data sets. The Applicant considers it important to highlight that, as detailed in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), it recognises that even with these mitigation measures in place, there remains the potential for a risk of impact through disturbance to nesting black seabream or, for unknown seabream nesting areas at least, an uncertain level of risk of direct or indirect effects arising from the seabed disturbance during offshore cable laying, together with subsequent raised SSC and deposition. The Applicant has</p>

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	therefore does not fill data gaps for areas outside of these boxes. We advise areas located outside of these survey boxes should not be considered to be absent of black seabream nests. Point 8.6.80 also suggests 'Sussex IFCA data indicated that the majority of black seabream nest areas in 2014 fell outside of the repeat monitoring areas'. Whilst the assessment has some recognition of the limitations, we advise that these should be fully acknowledged, particularly in relation to the limited confidence they give to the baseline data, and the assessment revisited to account for the uncertainty introduced. Natural England advises that the aggregates data is useful in terms of avoidance of known nests, but should not be considered to suggest nesting does not occur outside of the survey boxes. In the absence of a robust dataset, we advise the assessment must therefore assume that nests could be present in the closest point of the MCZ to any activity.								therefore also committed to a seasonal restriction on the offshore export cable corridor installation works, during the identified breeding season of March to July (C-273, Commitments Register [REP4-057] (updated at Deadline 5) as secured in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), Condition 11(1)(k) of the dML, Schedules 11 and 12 of the draft DCO [REP4-004] (updated at Deadline 5).
E12	It is stated that 'The post consent survey, undertaken as part of a suite of pre-construction surveys, will allow a determination to be made as to the extent of the nesting area, and specifically the key nesting areas, in order to identify the best cable route, minimising		No change		No change		No change		The details of the pre-construction surveys are necessarily finalised post-consent and agreed with the MMO, in consultation with Natural England. The pre-construction survey will consist of drop-down video, high-resolution full sea floor coverage swath-bathymetric surveys, inclusive of side scan surveys and MBES undertaken to International Hydrographic Organization (IHO) Order 1A standard (secured by dML Condition 16, Schedules 11 and 12 of the draft DCO

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	interaction with key sensitive features where practical, prior to offshore export cable installation'. Natural England advise that due to both seasonal variation and interannual variation with regards to nesting locations a single pre-construction survey should not be presumed as definitively and absolutely defining nesting locations. We advise that the focus should be on ensuring that that survey identifies potentially suitable habitat for nesting and avoids this. We advise that an appropriate methodology for pre-construction surveys has yet to be agreed and that this should be agreed with the MMO in consultation with Natural England. Whilst we understand that the final details of this are likely to be agreed post-consent, we advise that an outline plan should be included in the In Principle Monitoring Plan. The micro-siting should focus on avoiding the areas identified in these surveys and also known nesting locations.								<p>[REP4-004] (updated at Deadline 5). These surveys will provide data appropriate to identification of black bream nest features within the export cable corridor (both in terms of resolution of the acoustic imagery and the timing of the surveys).</p> <p>The proposed pre and post-construction surveys as set out in the Offshore In Principle Monitoring Plan [REP4-055] (updated at Deadline 5), along with the export cable specifications and installation equipment parameters, will inform the final routing/micrositing of cables. However, on the basis of the current site-specific survey data, a routeing design exercise was undertaken to demonstrate the principles of the approach that will be adopted for the final design. The outputs of this exercise are detailed in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5). The requirement for post-construction monitoring will be dependent on the findings of the pre-construction surveys as set out in the Offshore In Principle Monitoring Plan [REP4-055] (updated at Deadline 5).</p>
E13	It is stated that 'Historical analysis of black seabream monitoring data identified black seabream nesting areas tend to correspond to shallow waters (<10m) with thin layers of coarse sediments (10 to 30cm deep) overlying bedrock within		No change		No change		No change		<p>The Applicant is confident that all available data has been provided in Chapter 8: Fish and shellfish ecology, Volume 2 [APP-049] (updated at Deadline 5). Principal densities and aggregations of black bream nesting sites will be mapped in the Final Sensitive Features Mitigation Plan (which will be developed post consent based on the final design parameters (secured in Condition 11(1)(k) of the dMLs (Schedules 11 and 12 of the draft DCO [REP4-004] (updated</p>

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	the general vicinity of rocky outcrops (GoBe, 2015). BGS data identified areas of chalk beds within the intertidal area of the offshore export cable corridor and within the north-eastern tip of the array area (see Figure 8.13, Volume 3 of the ES (Document Reference 6.3.8)). However, the data presented in 8.13 is broadscale. Additionally, no key is provided to explain what the area shaded in each colour signifies. Natural England advises consideration is given to what site-specific information could be gathered pre-consent to strengthen this information. We advise this information could be used to improve confidence in avoiding suitable black bream nesting habitat were possible within the cable corridor.								at Deadline 5)), utilising historic desk studies, survey data drawn from the aggregates industry surveys, geophysical survey data for the export cable corridor carried out in 2020 and the pre-construction data that will be collected post-consent. The pre-construction survey will consist of drop-down video, high-resolution full sea floor coverage swath-bathymetric surveys, inclusive of side scan surveys and MBES undertaken to International Hydrographic Organization (IHO) Order 1A standard (secured by dML Condition 16, Schedules 11 and 12 of the draft DCO [REP4-004] (updated at Deadline 5). The pre-construction surveys set in the Offshore In Principle Monitoring Plan [REP4-055] (updated at Deadline 5), along with the export cable specifications and installation equipment parameters, will inform the final routing/micrositing of cables. The Applicant confirms that Figure 8.13 of Volume 3 Chapter 8 Fish and Shellfish – Figures [REP1-007] will be revised and submitted Deadline 6.
E14	We advise that it is important to distinguish bream as a feature of a designated site in a key nesting location (Kingmere MCZ), from the general population described over a wide area in this paragraph. We advise clarity is provided on this throughout the ES chapter and the MCZ assessment.		No change		No change		No change		The Applicant confirms that impacts on black seabream as a receptor have been assessed in Chapter 8: Fish and shellfish ecology, Volume 2 [APP-049] (updated at Deadline 5), which also includes various references to its protected status as a feature of the Kingmere MCZ (see for example Table 8-1 and Table 8-11 of the chapter). The potential for impacts on black seabream as a feature of the Kingmere MCZ have been assessed in the Draft Marine Conservation Zone assessment [APP-040] .
E18	It is stated that 'there is a risk of direct disturbance to areas of nesting and / or nesting potential that may not be avoidable. Whilst a specific		No change		No change		No change		The Applicant has made a commitment to avoid direct impacts on all known black seabream nesting areas in the first instance, where possible (C-269) and a seasonal restriction to conduct works outside of the black seabream breeding period (1st March- 31st July inclusive) (C-273) as detailed in the

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	environmental measure has not been embedded within the design of the Proposed Development at this stage, there are a suite of measures available to reduce the magnitude, and therefore significance of direct disturbance (see RED, 2022). Natural England understood that the Applicant had committed to avoiding direct impacts on all known black seabream nesting areas in the first instance, where possible. Whilst we understand that mitigation measures have been proposed, greater confidence is required in the efficacy, as well as their potential to succeed, in the seabed conditions along the cable route. The Applicant needs to demonstrate that these measures will be effective or introduce additional mitigation.								<p>Commitments Register [REP4-057] (updated at Deadline 5) and the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5) secured in Condition 11(1)(k) of the dMLs (Schedules 11 and 12 of the draft DCO [REP4-004] (updated at Deadline 5)). The cable routing design will be informed by pre-construction surveys, and a Cable Burial Risk Assessment, undertaken when the final design parameters are determined post-consent, as conditioned in Part 2, Condition 11(1)(a) (Deemed Marine Licence).</p> <p>The Applicant confirms that the mitigation proposed provides for eventualities where this is not possible. As detailed in Chapter 8: Fish and shellfish ecology, Volume 2 [APP-049] (updated at Deadline 5), the mitigation measures proposed include the adoption of specialist offshore export cable laying and installation techniques to minimise direct and indirect seabed disturbance footprint to reduce impacts on sensitive features.</p>
E19	Natural England support black seabream (as well as herring, sandeel, and seahorses) being modelled as stationary receptors, we do not consider fleeing receptor models appropriate for these species. We therefore advise any reference or modelling of fleeing receptors should be disregarded in relation to these species.		No change		No change		Please refer to our appendix E4 comments reiterating this point in relation to information provided at deadline 3.		The Applicant considers that the fleeing receptor approach is relevant where mobile species are not spatially restricted (due to breeding activity for example). Where species are restricted in such ways, the assessment has been undertaken using the static receptor modelling outputs. The Applicant confirms that breeding black seabream, spawning herring, sandeel, and seahorses have all been assessed as stationary receptors when regarding impacts from underwater noise. All pelagic spawning fish assessed in the chapter are considered mobile and expected to vacate the area in which the impact could occur with the onset of 'soft start' piling. A fleeing receptor model for underwater noise modelling was therefore used to inform the assessment for these species.

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E20	Natural England question why the south modelling location has been considered the worst case within the array area. We note this is not the closest modelling location to Kingmere MCZ or Beachy Head West MCZ. We advise that justification is provided in an updated assessment.		No change		No change		No change		<p>The Applicant clarifies that references to the impact ranges from the south modelling location in Chapter 8: Fish and shellfish ecology, Volume 2 [APP-049] (updated at Deadline 5), were made as this modelling location had the greatest impact ranges. As a precautionary basis, these ranges were therefore referred to. The Applicant however confirms that the East modelling location represents the eastern array boundary, which is closest to the Beachy Head West MCZ. The portion to the north edge of this boundary is a Windfarm Separation Zone (where no WTGs can be built, defined on the Offshore Works Plan [APP-008]), see Figure 5-14 in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), and no piling will occur further north than the location used for modelling. Therefore, this represents the worst-case modelling location in respect of seahorse and the Beachy Head West MCZ.</p> <p>The northwest modelling location within the Rampion 2 array area is situated on the closest boundary to the Kingmere MCZ but intended to be generally representative of the northern side of the array area. It is important to note that, in respect of black seabream, the exact modelling location on this boundary also lies in an area of the proposed DCO Order Limits within which no piling will be undertaken during the black seabream-sensitive season, as set out in commitment C-280 (Commitment that no piling will occur in the piling exclusion zones during the seabream breeding period (March-July), which will be defined by the modelling in the Final Sensitive Features Mitigation Plan), and commitment C-281 (Commitment to no piling within the western part of the Rampion 2 offshore array closest to the Kingmere MCZ during the majority of the black seabream breeding period (March-June)). As shown in Figure 5.13 of the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), even with the combined mitigation measures delivering a 20 dB reduction in noise emission, the modelling location and any other location within the proposed DCO Order Limits in closer proximity to the boundaries of the MCZ lie within the piling exclusion zone. Therefore, the northern modelling location is effectively in excess of the worst-case scenario and therefore clearly represents an appropriate and acceptable worst case location for modelling for the purposes of EIA.</p>

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E21	A piling Marine Mammal Mitigation Protocol (MMMP) will be implemented during construction. A Draft Piling Marine Mammal Protocol (Document Reference 7.14) has been submitted with this application, which includes soft start procedures. Natural England consider the MCZ features (particularly black seabream and seahorses) to be effectively static features, therefore mitigation measures that relate to fleeing features are not applicable. We therefore advise it is removed from the assessment in relation to these features, and more appropriate mitigation presented.		No change		No change		No change		The Applicant confirms that the inclusion of Draft Piling Marine Mammal Mitigation Protocol [REP4-051] in Table 8-13 in Chapter 8: Fish and shellfish ecology, Volume 2 [APP-049] (updated at Deadline 5), and in the Draft Marine Conservation Zone assessment [APP-040] , as an embedded environmental mitigation measure purely relates to the use of soft start procedures for piling to deter mobile marine life, therefore reducing the noise exposure to mobile fish and shellfish receptors (such as black seabream outside of the breeding season). With regards to mitigating against the potential for impacts to sensitive stationary receptors such as breeding black seabream and seahorse, further mitigation measures have been proposed. These are detailed in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5) and include noise abatement measures and the development of a spatial and temporal zoning plan for piling.
E22	Commitment 274, 280,281: 'Commence piling at locations furthest from the MCZ the Kingmere MCZ during the black seabream breeding period (March-July)'. 'No piling will occur in the piling exclusion zones during the seabream breeding period (March-July) which will be defined by the modelling in the Final Sensitive Features Mitigation Plan'. 'No piling within the western part of the Rampion 2 offshore array closest to the Kingmere MCZ during the majority of the black seabream breeding period (March - June); and sequenced piling in the western part of the Offshore Array Area during July in accordance with the zoning		No change		No change		This remains Natural England's advice. Please see our deadline 4 advice in Appendix E4 and N4.		The Applicant maintains its position that a full piling restriction from 1 March to 31 July is disproportionate to the risk of an impact arising that could result in significant population level effects on nesting black seabream. Given the proposed application of a variety of mitigation measures from March through to July, inclusive of noise abatement measure, seasonal restrictions and zoning, which will be secured through implementation of an approved Sensitive Features Mitigation Plan, the Applicant is confident that there will be no TTS, or behavioural impacts on black seabream as features of the Kingmere MCZ and therefore no hindrance of the conservation objectives of the MCZ. Please refer to Figure 5.4 to 5.13 in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5). In addition, on request of the Examining Authority, the proposed piling restrictions for sensitive features (including black seabream) as defined using a threshold of 135dB SELss for behavioural responses (based on the findings of Hawkins et al., 2014) were set out to identify the potential implications of using the 135dB threshold, on the piling zoning plans. As

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	<p>plan to be set out in the Final Sensitive Features Mitigation Plan'. Based on the modelling for the worst-case scenarios provided, we consider that piling at locations further from Kingmere MCZ, could still result in TTS and behavioural impacts within Kingmere MCZ. Therefore, we are not persuaded that this mitigation would prevent the conservation objectives being hindered. We advise that based on the evidence presented to date, our outstanding concerns around the lack of a suitable threshold and the likely efficacy of mitigation measures in the specific environmental conditions of the development site, the exclusion should cover all piling works March to July inclusive, inclusive in line with the sensitive season for spawning/breeding black seabream in the conservation advice for Kingmere MCZ. We advise this is the appropriate length of the piling restriction needed to avoid hindering the conservation objectives of the MCZ. This is Natural England's position. Our position that a full seasonal restriction is required has not changed from Rampion 1. We also question if the worst-case scenario including simultaneous and sequential piling has been considered in the mitigation plan. If not, this should be reviewed. We</p>								<p>demonstrated in Appendix H FS: Noise Thresholds for Black Seabream within Deadline 3 Submission – 8.54 Applicant's Responses to Examining Authority's First Written Questions (ExQ1) [REP3-051] the piling zoning plan as defined using the 135 dB SELss behavioural threshold is still achievable, although is anticipated to have programme implications. For more detail on these implications, please see the Applicant's response to ref FS2.7 in Table 2-1 above.</p> <p>The Applicant also confirms that the worst-case piling scenarios (the simultaneous installation of monopiles or multileg foundations) have been used to inform the definition of the piling exclusion zones, within the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5) (please refer to response E6 for additional information provided by the Applicant on the worst-case piling scenarios). Furthermore, the Applicant also confirms that the exclusion zones have also been defined using the 141 dB SELss threshold. The Applicant maintains its position that, as informed by a thorough review of available literature and data whereby no species-specific information for black seabream was identified, seabass is a suitable proxy, due to being morphologically similar to black seabream. The Applicant is therefore confident that a disturbance threshold of 141 dB SELss (based on seabass as a proxy species (Kastelein <i>et al.</i>, 2017)) is a suitably precautionary threshold for the assessment of underwater noise impacts on nesting black seabream.</p> <p>Information on the efficacy and limitations of noise abatement systems was provided in Appendix I MM: Noise Abatement Systems in the Applicant's Responses to Examining Authority's Written Questions [REP3-050] submitted into Examination at Deadline 3. Further work has been undertaken to provide a comparison of the environmental conditions at the Proposed Development with other projects where Noise Abatement Systems (NAS) have been deployed. The outputs of this work are detailed in Information to support efficacy of noise mitigation / abatement techniques with respect to site conditions at Rampion 2 Offshore Windfarm [REP4-067] and were</p>

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E23	<p>highlight that there is a risk that delaying the production of a final mitigation plan to the post-consent phase will result in disagreement and delay, and urge the Applicant to bring something forward prior to consent that Natural England can agree.</p> <p>Commitment 265: 'At least one offshore pilling noise mitigation technology will be utilised to deliver underwater noise attenuation in order to reduce predicted impacts to sensitive receptors at relevant Marine Conservation Zone (MCZ) sites and reduce the risk of significant residual effects on the designated features of these sites'. Notwithstanding Natural England's current concerns regarding the efficacy of mitigation measures, we advise that instead of being one measure, this commitment should be to use the noise abatement combination that achieves the greatest amount of noise reduction year-round. It is stated that 'Assumptions on attenuation performance of the noise mitigation techniques are based on demonstrable performance of the technology, to ensure confidence in delivering the required noise level reductions'. In relation to reducing impacts on MCZ features to an acceptable level,</p>		No change		No change		This remains Natural England's advice. Please see our deadline 4 advice in Appendix E4 and N4.		<p>incorporated into the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5).</p> <p>The Applicant confirms that the main objective of the proposed mitigation is to achieve the appropriate and sufficient noise reduction levels year-round.</p> <p>Information on the efficacy and limitations of noise abatement systems was provided in Appendix I MM: Noise Abatement Systems in the Applicant's Responses to Examining Authority's Written Questions [REP3-050] submitted into Examination at Deadline 3. Further work has been undertaken to provide a comparison of the environmental conditions at the Proposed Development with other projects where Noise Abatement Systems (NAS) have been deployed, and to look into the efficacy of the NAS. This work is detailed in Information to support efficacy of noise mitigation / abatement techniques with respect to site conditions at Rampion 2 Offshore Windfarm [REP4-067]. As detailed in the report, taking into account the site characteristics and noise abatement levels, and considering the outputs of live monitoring of numerous projects whereby NAS have been applied successfully, it is apparent that up to 20 dB noise reduction can be achieved (within depths of ≤ 40 m, such as the speed of local currents), through the use of a combination of measures, comprising the DBBC as the principal measure, together with an additional noise abatement measure, which will be selected based on the most appropriate equipment available at the time of construction. It was also identified that in water depths of over 40 m, the achievable noise reduction could be slightly reduced by up to 2 dB. However, the use of state-of-the-art eBBC and BBC could bring up to 2 dB more noise reduction, which would</p>

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	<p>it needs to be demonstrated that the mitigation will be sufficient given the environmental conditions in the Rampion 2 array to reduce noise to an agreed level within the MCZ's. Environmental conditions that could affect efficacy, include factors such as depth, the speed of local currents, wave height, wind speed and geology. We advise we are not aware that a full comparison between environmental conditions at test locations and those at Rampion 2 has been conducted. We understand that the Applicant to date has not had this information, and therefore we disagree that confidence in the noise attention to be achieved has been provided. We note that the Applicant has also proposed combining mitigation measures to achieve higher level of attenuation. We advise that no evidence is provided to support this being viable, or that it is possible to achieve these values through a combination of measures. We advise that full comparison of environmental conditions is undertaken, to aid in providing further confidence in the levels of abatement proposed. We advise this information needs to be submitted into the Examination. We advise further evidence is provided to have confidence that combining measures to</p>								<p>compensate the negative effect of water depths up to 50 m. The Applicant also directs the Examining Authority to the Applicant's response to ref FS2.9 in Table 2-1 of this document.</p> <p>Furthermore, as detailed in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), the Applicant has committed to the use of DBBC throughout the piling campaign which offer a 15 dB reduction in noise levels. The implementation of this mitigation will further reduce the impact ranges of underwater noise (including behavioural effect ranges) to sensitive features within the vicinity of the Proposed Development in comparison to the previous commitment to use at least one noise abatement system throughout the piling campaign (which assumed, at minimum, 6dB reduction for all piling works). The Applicant would highlight that this is a substantial additional commitment to mitigation.</p> <p>Commitment C-265 has been updated accordingly to reflect this proposed mitigation. The updated commitment is as follows:</p> <p><i>C-265: "Double big bubble curtains will be deployed as the minimum single offshore piling 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:</i></p> <ul style="list-style-type: none"> • <i>sensitive receptors at relevant Marine Conservation Zone (MCZ) sites and reduce the risk of significant residual effects on the designated features of these sites;</i> • <i>spawning herring; and</i> • <i>marine mammals."</i> <p>Furthermore, as detailed in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), the Applicant has proposed the application of a variety of mitigation measures from March through to July, inclusive of a combination of noise abatement measures, seasonal restrictions and zoning of piling, with the objective to achieve the appropriate and sufficient noise reduction levels, to</p>

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	achieve the values stated is viable.								mitigate against the potential for impacts to black bream as features of the Kingmere MCZ.
E24	It is stated that 'Although it is likely that potential predators will also vacate the area during potential piling thus limiting this potential effect'. Natural England advise that no evidence has been presented to support this statement. We are aware that observation of nests in Dorset included predation by invertebrates such as whelks and urchins. We advise it should not be assumed that resident animals will have both the swimming capability and incentive to vacate the area, particularly if they are territorial/highly residential animals. Natural England advise that no evidence has been presented to support this statement, we advise this is provided or this assumption is removed from consideration in the assessment.		No change		No change		No change		This advice is welcomed by the Applicant. The Applicant confirms that a precautionary approach has been taken, assuming the potential disturbance of breeding black bream from piling operations. The Applicant has therefore made several commitments to ensure no population level effects arise from underwater noise from piling. These are detailed in full in the Commitments Register [REP4-057] (updated at Deadline 5) and the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5). The text "Although it is likely that potential predators will also vacate the area during potential piling thus limiting this potential effect" has been removed from the paragraph, this has been added to the Errata submitted at Deadline 1. This amendment has also been made in Chapter 8 Fish and shellfish ecology, Volume 2 [APP-049] (submitted at Deadline 5). The Applicant agrees with Natural England that territorial/highly residential animals, which could be considered to include black seabream during the nesting phase, might be considered as less likely to vacate the area if disturbed whilst nest guarding.
E25	We note that the 100km2 is stated as the underwater noise search area in the cumulative effects section. However, the distances stated for simultaneous piling are significantly greater than this. We advise the use of 100km2 to define the underwater noise study area across the		No change		No change		No change		The Applicant clarifies that the cumulative search area is defined in Chapter 8: Fish and shellfish ecology, Volume 2 [APP-049] (updated at Deadline 5) as a 100 km buffer from the proposed Order Limits, and not a 100 km ² area. As such the 100 km buffer is significantly larger than the impact areas presented for simultaneous piling.

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E26	<p>documents, may not represent the worst-case scenario. We advise that the appropriateness of the 100km2 search area is re-considered, and further justification is provided.</p> <p>Natural England do not agree that the modelling locations used represent the worst-case scenario within Kingmere MCZ. We advise that modelling from the location within array area closest to the MCZ would appear to represent the greatest potential for overlap for a single pile. Visually it appears a location to the northeast of the current north-western modelling location could result in greater overlap with the MCZ in relation to 207dB, 203dB, and 186dB contours. Additionally, where piling is conducted simultaneously at two locations in terms of the MCZ we question what the closest distance between locations is likely to be, and how this is considered in terms of impacts on the MCZ. Currently the east and west locations appear to represent one of the better cases for the MCZ, as opposed to the closest together possible piling locations in closest proximity to the MCZ. We advise further explanation is required on this before Natural England can agree on there not being a significant impact in relation to mortality, potential mortal injury</p>		No change		No change		No change		<p>The northwest modelling location within the Rampion 2 array area is situated on the closest boundary to the Kingmere MCZ but intended to be generally representative of the northern side of the array area. It is important to note that, in respect of black seabream, the exact modelling location on this boundary also lies in an area of the proposed DCO Order Limits within which no piling will be undertaken during the seabream-sensitive season, as set out in commitment C-280 (Commitment that no piling will occur in the piling exclusion zones during the seabream breeding period (March-July), which will be defined by the modelling in the Final Sensitive Features Mitigation Plan), and commitment C-281 (Commitment to no piling within the western part of the Rampion 2 offshore array closest to the Kingmere MCZ during the majority of the black seabream breeding period (March-June)). As shown in Figure 5.13 of the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5) even with the combined mitigation measures delivering a 20 dB reduction in noise emission, the modelling location and any other location within the proposed DCO Order Limits in closer proximity to the boundaries of the MCZ lie within the piling exclusion zone. Therefore, the northern modelling location is effectively in excess of the worst-case scenario.</p> <p>The effective worst case location for piling closest to the Kingmere MCZ is on the edge of the exclusion zone, in excess of 10 km at its closest point. Although modelling has not been undertaken in this closest location, the East modelling location is in deeper water and therefore represents a precautionary position for an estimation of impact. At this location, the greatest modelled recoverable injury impact range (203 dB SEL_{cum}) using the DBBC is 2.1 km with four piles installed. A worst case model run to 203 dB SEL_{cum}, affecting a stationary receptor, doubling the parameters in the same theoretical location for eight piles installed, is 3.5 km. This would still</p>

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	and recoverable injury of black seabream. We advise that further explanation and justification is provided to explain how this has been considered.								<p>allow a large space between the edge of the exclusion zone and the MCZ.</p> <p>In a meeting held on 28 June 2024, Natural England queried the worst-case underwater noise modelling location on the western boundary, with regard to the Selsey Bill and the Hounds MCZ. The piling location on the western boundary of the Order Limits was identified as the worst-case location on account of the bathymetry of the site (the modelled location lies in an area of deeper water). Notwithstanding this, to provide reassurance to Natural England, the Applicant will share figures with Natural England following Deadline 5 and submit them into the examination at Deadline 6, these figures will show the worst case and mitigated underwater noise contours, relative to the Selsey Bill and the Hounds MCZ from the location closest to the MCZ on the western boundary of the Order Limits.</p>
E27	Natural England advises that it is the interaction with the boundary of the MCZ that should be referred to here, and not the perceived highest density nesting locations within the MCZ. We advise this needs to be amended across the assessment. In relation to recoverable injury, we seek clarity that this contour does not overlap with the MCZ in any of the worst-case scenarios. We note that Figure 8.18 for example seems to show this contour on the boundary not going into the MCZ. We advise that should any of the worst-case scenarios involve the 203dB contour overlapping with the MCZ (even over a small area) this is likely to change our		Additional material was submitted at Deadline 1 which NE will respond to at Deadline 3.		Natural England have provided advice on the additional material submitted in Appendix E3. This information has not changed our position on this point.		No change		<p>The Applicant welcomes the advice provided by Natural England and confirms that the areas of primary importance for black seabream are identified in Figures 8.14a and 8.14b of Chapter 8: Fish and shellfish – Figures, Volume 3 [APP-081]. The Applicant, however, has taken a precautionary approach in the assessment and has defined mitigation measures to ensure no disturbance impacts from the Proposed Development will occur within the MCZ boundary, and therefore the Conservation Objectives will not be hindered. These are detailed in the Commitments Register [REP4-057] (updated at Deadline 5) and the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5).</p> <p>To address Natural England's concerns about the potential for recoverable injury impacts, at Deadline 1, the Applicant presented the unmitigated and mitigated recoverable injury noise contours, relative to the Kingmere MCZ in Appendix 9 - Further Information for Action Points 38, 39 [REP1-020]. As evident in this submission, whilst there is a minor interaction of the unmitigated 203 dB recoverable injury contour with the Kingmere MCZ, with the implementation of at</p>

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	advice on this matter. We advise that clarity is provided here in relation to the interaction with the boundary of the MCZ.								<p>least one noise abatement measure, there is no interaction of the mitigated recoverable injury impact contours with the MCZ. As detailed in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), the Applicant has since committed to the use of Double Big Bubble Curtains (DBBC) throughout the piling campaign. The implementation of this mitigation will further reduce the impact ranges of underwater noise (including behavioural effect ranges) to sensitive features within the vicinity of the Proposed Development in comparison to the previous commitment to use at least one noise abatement system throughout the piling campaign (which assumed, at minimum, 6dB reduction for all piling works). A revised Appendix 9 - Further Information for Action Points 38, 39 - Underwater Noise [REP4-061] was subsequently submitted at Deadline 4, showing the mitigated recoverable injury noise contours with the implementation of DBBC (15dB reduction). As evident, with the implementation of DBBC, there is no interaction of the recoverable injury impact contours with the Kingmere MCZ.</p> <p>Furthermore, as detailed in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), the Applicant has committed to various additional mitigation measures during the black seabream nesting season of March to July. These include the implementation of a spatial and temporal piling restriction in the western part of the array, and the use various noise abatement measures inclusive of noise mitigation technologies (DBBC and another noise abatement system) and sequencing of piling in the eastern part of the array from March through to June, and the implementation of a piling sequencing plan in July.</p>
E28	Black seabream are protected by Kingmere MCZ, and under the second conservation objective this specifically includes 'the population (whether temporary or otherwise) of that species occurring in the zone be free of the disturbance of a kind likely to significantly affect the survival		No change		No change		No change		<p>The Applicant confirms that the assessment of sensitivity in an Environmental Impact Assessment (EIA) relates to the sensitivity of a receptor to a specific impact source or type, following a source-pathway-receptor model. Using this approach for defining the sensitivity of a receptor to underwater noise, underwater noise sensitivity in fish is anatomically determined. As detailed in paragraph 8.9.48 of Chapter 8: Fish and shellfish ecology, Volume 2 [APP-049] (updated at Deadline 5), black seabream have swim bladders that are close but not intimately connected to the ear.</p>

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	<p>of its members or their ability to aggregate, nest, or lay, fertilise or guard eggs during breeding.' Natural England advise that this protection is afforded as black seabream are considered to be highly vulnerable during the breeding season due to their specific nest locations and nest guarding behaviours, which mean expending more energy, reducing their feeding opportunities, and increasing their predation risk. Overall, these behaviours take an increased physiological toll compared to non-breeding behaviours, and impacts affect larger proportions of the local population, and so during the breeding season the black seabream have a heightened sensitivity to disruptive impacts. Therefore, we advise that they are treated as a receptor with high sensitivity to impacts from underwater noise throughout the noise assessment. The current sensitivity of medium only takes into account the hearing sensitivity of the species and not the ecological sensitivity, effectively treating its behaviour as simply normal shoaling activity as opposed to specific black seabream spawning behaviours. We advise that the sensitivity is amended to high.</p>								<p>It is on this basis that the receptor is considered by the Applicant to be of medium vulnerability. Whilst black seabream during the breeding (nesting) season can be considered as more sensitive to being excluded from nesting sites than at other times in the species' life-cycle, this doesn't change their sensitivity to underwater noise immission, given this is derived from hearing ability. Due consideration of the spawning behaviours of black seabream within the Kingmere MCZ are incorporated into the underwater noise modelling, whereby the receptor is considered a stationary receptor, therefore assuming increased exposure to underwater noise when guarding their nests. Furthermore, consideration of effects on life-cycle aspects is also given in terms of impact consequence (i.e. significance of effect), within the assessment.</p>

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E29	Natural England disagree with the downgrading of the magnitude of impact based on there being 'limited interaction with the areas of primary importance'. We advise clarification is provided that the area of primary importance included the closest boundary of the MCZ. We advise this is clarified and if it is not MCZ boundary it is amended to this.		No change		No change		No change		<p>The Applicant directs Natural England to the Applicant's response to ref E27 above.</p> <p>The Applicant maintains its position, that the magnitude of impact has not been downgraded based on the limited interaction with areas of importance to black bream. The magnitude of impact assessed within Chapter 8: Fish and shellfish – Figures, Volume 3 [APP-081], is correct and precautionary, with the assumption of key areas of importance to black seabream being located with the Kingmere MCZ. Moreover, a precautionary approach has been taken, with the Applicant proposing multiple mitigation measures for black bream as features of the Kingmere MCZ. These are detailed in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5) and include the use of noise abatement technologies and the development of a spatial and temporal zoning plan for piling during the black bream nesting season (March – July).</p>
E30	Natural England note that there is an interaction between the TTS contours and Kingmere MCZ. Based on the information presented Natural England does not have confidence the mitigation presented in C-265, C-274, C-281 will be sufficiently effective. Therefore, we do not agree that the impact can be consider negligible for TTS. We advise that an assessment with and without mitigation is provided to present the worst-case scenario. We advise that based on our lack of confidence in the mitigation measures, we cannot conclude that the conservation objectives of Kingmere MCZ will not be hindered by this impact. We advise that information on the		No change		No change		No change		<p>The Applicant acknowledges that, as evident in Figures 8.18 and 8.19 of, Chapter 8: Fish and Shellfish – Figures, Volume 3 [REP1-007] there is an interaction of the unmitigated TTS impact contours with the Kingmere MCZ. It is on this basis, that, as detailed in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), multiple measures have been proposed during the black bream nesting season (March – July) to mitigate against impacts to black bream as features of the Kingmere MCZ. These measures include the use of noise abatement technologies and the development of a spatial and temporal zoning plan for piling during the black bream nesting season (March – July) to avoid effects at the much more stringent behavioural level (rather than TTS). Information on the efficacy and limitations of noise abatement systems was provided in Appendix I MM: Noise Abatement Systems in the Applicant's Responses to Examining Authority's Written Questions [REP3-050] submitted into Examination at Deadline 3. Further work has been undertaken to provide a comparison of the environmental conditions at the Proposed Development with other projects where Noise Abatement Systems (NAS)</p>

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E31	<p>efficacy of the migration measures proposed in the same environmental conditions as are present at the Rampion 2 site is presented to demonstrate confidence that the noise levels would not exceed 186dB within the MCZ boundary.</p> <p>Breeding black seabream exhibit breeding behaviours that if subject to a behavioural response could even in the short-term lead to effects breeding success that could be significant. We strongly disagree that these effects can be considered to have no wider effect on the MCZ feature, considering the impacts of potentially failed breeding at Kingmere across the local population (given site fidelity) and in the light of the conservation objectives of the MCZ. We therefore advise that the application of the concept of acclimatisation to noise is inappropriate in this instance. This is because even if acclimatisation were to occur, the time frames over which it may occur would mean that it is likely this effect would have already had a significant impact on the breeding success of bream before this point, and that it is feasible breeding</p>		No change		No change		No change		<p>have been deployed. The outputs of this work are detailed in Information to support efficacy of noise mitigation / abatement techniques with respect to site conditions at Rampion 2 Offshore Windfarm [REP4-067] and were incorporated into the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5). Through the application of a variety of mitigation measures, which will be secured through implementation of an approved Sensitive Features Mitigation Plan, the Applicant is confident that piling operations will not hinder the Kingmere Marine Conservation Zone's conservation objectives.</p> <p>The Applicant would highlight that it does not agree with Natural England that piling, with the proposed mitigation methods which would be implemented during the black bream spawning period, would hinder the conservation objectives of the MCZ. The Applicant accepts there is a risk of impact on noise sensitive species such as black seabream arising from noise generated by piling, and this has, therefore, been appropriately and robustly assessed within the ES. The Applicant has committed to a range of mitigation measures during piling works to reduce the levels of noise received by sensitive receptors as features of the MCZ to 141 dB SELss; a level at which the best available evidence for comparable proxy species elicits no more than a short-lived and initial startle response (Kastelein <i>et al.</i>, 2017). The Applicant fundamentally disagrees that the startle response for seabass (used as a proxy species due to its common physiology with black seabream; physiology being the most critical aspect determining noise-sensitivity) evidenced in Kastelein <i>et al.</i> (2017) would lead to a population level effect on black seabream such that the Conservation Objectives of the Kingmere MCZ would be hindered, i.e. at a level "likely significantly to affect the survival of its members or their ability to aggregate, nest, or lay, fertilise or guard eggs during breeding".</p> <p>The Applicant has noted the potential for acclimatisation of black seabream to repeated sound exposure. Anderson <i>et al.</i> (2011) reported a subsidence in behavioural responses of lined seahorse, after a week of exposure to ambient noise</p>

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E32	<p>attempts could have failed for that year. We advise that this is Natural England's position on this point and that habitation is not taken into account within the assessment.</p> <p>In relation to black seabream as a feature of Kingmere MCZ, Natural England does not support a behavioural threshold being derived for black</p>		No change		No change		No change		<p>levels of 123.3 ± 1.0 dB SPL. Neo <i>et al.</i> (2018) reported evidence of habituation of seabass to recordings of pile driving and seismic surveys over a 12-week period. There is therefore the potential for acclimatisation of seabream to repeated sound exposure, although the Applicant acknowledges that, if this were to occur, this would occur over time. Considering the precautionary disturbance threshold, the implementation of proposed mitigation measures (including noise abatement measures, seasonal restrictions and zoning), and the potential for acclimatisation to underwater noise, the Applicant is confident that there will be no wider effects on black seabream as a feature of the Kingmere MCZ. This position is further supported through consideration of other relevant factors, including:</p> <ul style="list-style-type: none"> the level of exceedance above ambient noise levels (which are evidenced in the 2022 and 2023 survey reports Appendix 8.3: Underwater noise study for sea bream disturbance [REP2-011] and Appendix 8.4: Black seabream Underwater Noise Technical Note and Survey Results [PEPD-023]) arising at 141 dB SELs, and the rationale for using such to inform the identification of a meaningful behavioural threshold in a site-specific context for the Kingmere MCZ as set out in Rampion 2 Technical Note: Underwater noise mitigation for sensitive features in the Evidence Plan (Part 9 of 11) [APP-251]; behavioural context, and the likelihood that species engaged in certain activities, including spawning and subsequent nest guarding, may be highly motivated to continue such activities even where subjected to what comprises (with mitigation) a relatively minor stimulus (which would elicit an initial short-lived startle reaction); and the lack of any apparent decline in black seabream populations in the area following the construction of Rampion 1. <p>The Applicant's position on the behavioural threshold for black seabream has been reliant upon existing literature and best available knowledge and understanding, as detailed in</p>

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	<p>seabream from studies that:</p> <ul style="list-style-type: none"> • Are a proxy species for black seabream, as opposed to directly studying black seabream; • Are based on playback, particularly when this is in a tank and does not represent well the effects of particle motion that would be expected as a result of pile driving in the open ocean; • Are undertaken in captivity as opposed on receptors in the wild; • Use for example an air gun as opposed to a noise source akin to piling noise; • Are conducted within a quiet loch as opposed to the open sea. We advise that this is Natural England's position on this point. 								<p>Paragraph 8.9.247 <i>et seq.</i> of Chapter 8: Fish and shellfish Ecology, Volume 2 [APP-049] (updated at Deadline 5). Throughout the pre-application period, the Applicant has attempted to reach agreement with Natural England on a number of key issues through extensive work on this topic relating to, inter alia, establishing a disturbance threshold relevant to black seabream, upon which to inform the impact assessment and appropriate mitigation. These include, but are not limited to, the modelling of more precautionary disturbance thresholds, and the commissioning of dedicated surveys of ambient noise levels in 2022 and 2023 to provide contemporary site-specific data, and the proposal of a variety of mitigation measures over the consultation period.</p> <p>As detailed in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5) the Applicant considers the disturbance threshold of 141 dB SELss as suitably precautionary, as it is based on a short-lived startle response observed in sea bass. As informed by Popper <i>et al.</i>, (2014), behavioural disturbances are considered to be long term changes in behaviour and distribution, and should not include effects on single animals, or small changes in behaviour such as startle responses or minor movements. The use of the disturbance threshold of 141 dB SELss is therefore considered by the Applicant to represent an overly precautionary limit, notwithstanding it has agreed to set a threshold at this level.</p> <p>Further to this, the approach used by the Applicant to define a suitable threshold for disturbance from underwater noise aligns with that used in other OWF applications and assessments (e.g. Hornsea Four Offshore Wind Farm Application (Ørsted, 2021) Hornsea Project Three Offshore Wind Farm Application (Ørsted, 2018), Sheringham and Dudgeon Extension Offshore Wind Farm Projects Application (Equinor, 2022) Awel y Môr Offshore Wind Farm Application (RWE, 2023)), and therefore complies with current practice when approaching issues such as scientific data gaps and uncertainties, in order for planning decisions to be made.</p>
E33	Natural England disagrees with the addition of 30dB to the background noise levels based on the Radford et al. (2016)		No change		No change		No change		The Applicant recognises the challenges in using a study like Radford <i>et al.</i> (2016) (Appendix 8) to predict the effect of noise disturbance on seabream, given that the study was not conducted in an open sea area and based on a proxy species,

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	<p>study, which was conducted on seabass, in a laboratory conditions and based on playback. We note Radford et al (2016) noted increases in ventilation rate (a secondary indicator of stress) due to noise increases which were less than 30dB above ambient levels. Therefore, we do not support the use of this study to justify a lack of behavioural disturbance for black seabream above ambient noise levels. We advise that Collett et al. (2012) included a temporally limited measure that is now 11 years out of date. Therefore, this cannot be relied upon as evidence. We also advise that consideration needs to be given to the fact that naturally occurring peaks are unlikely to represent a continuous noise source in the same way piling would. We understand Cefas have concerns with background noise being defined as peaks, as opposed to minimums.</p>								<p>although it is representative of one of the few studies providing evidence in a scenario similar to that at Rampion 2 and should not be discounted. However, the conditions can be compared based on background noise recorded, (Collett <i>et al</i> 2012 being largely superseded by data from 2023 showing comparable levels):</p> <ul style="list-style-type: none"> - 117 dB RMS, captive fish (Radford <i>et al</i>, 2016) - 115 dB RMS recorded at Rampion 1 (Collett <i>et al</i>, 2012) - 111-117 dB RMS recorded over 5 months at Proposed Development (Subacoustech, 2023). <p>The species studied by Radford et al (2016), seabass, are more similar (morphologically and with respect to hearing sensitivity) to black seabream than those in the study recommended by Natural England i.e. sprat. Sprat have special structures mechanically linking the swim bladder to the ear, whereas black seabream have swim bladders that are close, but not intimately connected to the ear, and are therefore less sensitive to the impacts of underwater noise. Therefore, the Applicant maintains that the findings of Radford <i>et al.</i>, (2016) are the most appropriate, as the study represents both conditions and fish species that are the most applicable and comparable to the black seabream situation at the Proposed Development, for which the best available data are available.</p>
E34	<p>Natural England does not support the use of 141dB re 1uPa SELs (taken from Kastelein et al. (2017), as a threshold for black seabream behavioural disturbance and we do not agree that the threshold is highly precautionary. Natural England advise that this study cannot be used to predict fish behavioural responses to pile</p>		No change		No change		No change		<p>A thorough review of available literature and data was undertaken by the Applicant, and, having identified no species-specific information for black seabream, the literature review was continued to identify a suitable proxy species to further evidence the likely responses of black seabream to noise emissions. Seabass were identified as a suitable proxy species due to being morphologically similar to black seabream, at an equivalent life stage to the nesting black seabream. Red seabream were also identified as being a suitable proxy species, due to being in the same family as black seabream (Sparidae), and being in the same hearing</p>

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	<p>driving in the natural environment because: • The experiment was conducted in a bare 7m x 4m container, in which seabass occupied 25% of the space. As recognised by the authors, this highly artificial environment permits only a narrow range of natural responses. • The noise stimuli was produced by playing recordings of piledriving through speakers. As recognised by the authors, this method is highly limited and does not replicate pile driving at sea (e.g. the playback range was inhibited by the capacity of the speaker). • Behavioural response was monitored by video from a distance, and response classifications were based on the collective behaviour of the school. Individual physiological responses were not recorded (such as ventilation rate, blood chemistry) and neither did the survey design permit investigation of natural behavioural changes or subpopulation level impacts. • The study tested only 7 pre-defined noise levels, not a continuous spectrum. The lowest level of noise tested was 122dB re 1 mPa² s which did elicit some responses in the main study (i.e. it was perceived and reacted to by some of the seabass). Additionally, we advise that this study is not suitable to assess noise impacts</p>								<p>category, (categories as defined by Popper <i>et al.</i> (2014)). Sprat are suggested as a suitable proxy by the Marine Management Organisation (MMO), based on a study by Hawkins <i>et al.</i> (2014), which recorded initial responses of the species at 135 dB SELs. The Applicant does not support the use of this species as proxy, as sprat have a greater hearing capability and higher sensitivity (Group 4 receptor (Popper <i>et al.</i>, 2014)) to underwater noise than black seabream (Group 3 receptor) and are therefore expected to have a much increased reaction to any noise stimulus. In addition, the threshold (135 dB SELs) is based on a startle response of sprat which are not involved in any particular activity (i.e. not spawning) and located in quiet loch. It is therefore not considered appropriate to use this threshold within a much noisier area such as the English Channel (which is subject to high levels of anthropogenic activity and consequently noise) as the fish within this area would reasonably be expected to be accustomed to higher levels of noise and would thus have a correspondingly lower sensitivity to disturbance. The MMO have highlighted a study by Kastelein <i>et al.</i> (2017), which reported a 50% initial startle response (sudden short-lived changes in swimming speed) which occurred at an SELs of 131 dB re 1 mPa² s for 31 cm seabass and 141 dB re 1 mPa² s for 44 cm seabass. Of these thresholds, the MMO have suggested the application of the 131 dB re 1 mPa² s threshold to inform the impact assessment on nesting black seabream. The Applicant however, is confident that a threshold of 141 dB re 1 mPa² s (as based on seabass as proxy) is more appropriate for the following reasons. As reported by Kastelein <i>et al.</i> (2017), the thresholds are based on startle responses of seabass, which could be a brief change in swimming speed, direction, or body posture, in at least one of a group of four fish, with a very limited time duration, as opposed to a full abandonment of the ensonified area. Furthermore, there was no evidence of any consistent sustained response to sound exposure by the study animals (changes in school cohesion, swimming depth, and speed) at levels up to 166 dB SELs. As informed by Popper <i>et al.</i>, (2014), behavioural disturbances are considered to be long term changes in behaviour and distribution, and should not include effects on single animals, or small changes in behaviour such as startle responses or minor movements. The</p>

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	<p>to nesting black seabream in Kingmere MCZ for the following reasons: • The study was based on adult seabass, which do not exhibit demersal nest guarding or the breeding behaviours protected by Kingmere MCZ. • Natural England recognise that seabass and black bream are in the same hearing category, but note this is based solely on a grouping of physical characteristics and lacks any species-specific information or context. We advise that fish are extremely diverse and exhibit complex behaviours in response to a changeable environment. The authors of Kastelein also make this point: 'Trying to predict behavioural responses simply by using energy in a model is not realistic, as responses to sound depend not only on the received level, but also on a large number of other sound parameters, the context, and parameters relating to the animal'. • The study found a 50% initial response threshold occurred at an SELss of 141 dB re 1 mPa² s for 44cm sea bass. We note that 31cm seabass demonstrated a 50% initial response threshold occurring at 131 dB re 1 mPa² s. Given Natural England's conservation advice suggests that juveniles black seabream mature at around 20cm in length as females and are commonly 35cm in length, we advise the</p>								<p>Applicant therefore suggests the use of the disturbance threshold of 141 dB SELss (based on 44 cm seabass, as reported in Kastelien <i>et al.</i> (2017)) as suitably precautionary for an impact assessment on nesting black seabream. This is as the observed effects from underwater noise from pile driving on seabass were so minor (no sustained responses observed), there are unlikely to be any adverse effects on their ecology (such as sustained disturbance to nesting behaviours). Furthermore, the use of a threshold based on startle responses of 44cm fish is considered appropriate based on the findings of Perodou and Nedelec (1980), who reported that all black bream individuals caught in the English Channel under 30cm were female, with males measuring >40cm (black seabream are protogynous hermaphrodites, changing from female to male when they reach between 30 and 40 cm in length (Pawson, 1995)). This is also supported by Russell <i>et al.</i> (2014) and Millet and Loates (1997) (as cited in Vause and Clark., 2011) who report maximum lengths of 60cm. Therefore, 141 dB re 1 mPa² s is considered and appropriate behavioural response threshold, to define the potential for impacts on male black bream, exhibiting nest guarding behaviours. Therefore, this noise level is not considered to have any potential to trigger a significant effect on the black bream population within the Marine Conservation Zone (MCZ) and nor is it even likely to have an individual effect on breeding success. As the Applicant has proposed, taking into account the use of noise abatement systems, the 141 dB SELss limit, as based on seabass as a proxy, would be the maximum at the boundary of the Kingmere MCZ, and only at the maximum blow energy, no feature of the MCZ would even be expected to be exposed to this level of impact and therefore it remains conservative and sufficient to ensure no significant effects to the black seabream feature of the MCZ. The Applicant would be happy to consider an alternative proxy but is not aware (following the comprehensive literature review) of an alternative proxy species (other than those already presented) which offers the same level of similarity to black seabream, i.e. same physiology and hearing capability (which comprise the critical attributes). Whilst the breeding habit differs between seabass and black seabream, the sensitivity of the fish to noise stimuli is morphologically derived, and therefore this proxy species as suggested by the</p>

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	<p>use of a threshold for a larger 44cm sea bass is clearly not appropriate. • Seabass are broadcast spawners with pelagic eggs, and therefore they do not exhibit the same spawning, nesting and nest guarding behaviours as black seabream. This crucial element of black seabream ecology, as specifically detailed in the conservation objectives for the MCZ, needs to be duly considered in the impact assessment. We highlight that Natural England's has advised against this approach throughout the evidence plan process. We note that Figure 6 of Appendix 8.3 shows that even with using a 141dB re 1uPa SELs, this noise contour covers the entirety of Kingmere MCZ. This Appendix also references Kojima et al. (2010), which relates to red seabream, which is again inappropriate as this species does not have the same spawning behaviours as black seabream. Natural England advise that any behavioural threshold must be specific to the species (black seabream), the site (Kingmere MCZ) and the conservation objectives (breeding/spawning behaviours of black seabream) in order to successfully quantify and mitigate for the impacts. Currently Natural England's advice is that we cannot conclude that the behavioural</p>								<p>Applicant is considered appropriate for the purposes of defining black seabream noise response.</p>

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	disturbance impacts of the project would not cause the conservation objectives of the MCZ to be hindered. We note in point 8.9.266 it is stated that 'the use of the identified thresholds to inform the assessment of behavioural impacts on fish and shellfish is not supported by RED' due to the lack of understanding of how a wild animal will respond and viability in existing noise studies. Natural England advise that when coupled with all the existing issues in this specific case, it does appear unlikely a suitable threshold can be agreed. We advise that this is Natural England's position on this point.								
E35	Natural England support a further noise study being undertaken in 2023, given the temporal limitations of the previous 15-day study. Our understanding was that whilst this longer dataset would not be included with the ES, this would be available for the examination. Natural England advise that we are not content for this information to only be provided at the post-consent stage. We also advise that once this data is available there is still no certainty that a suitable behavioural threshold could be derived and agreed from this. We advise that this		We provided comments on Appendix 8.4: Black Seabream Underwater Noise Technical Note and Survey Results - Revision A [PEPD-023] at deadline 1. Our comments on this can be found in Appendix E1. The		No change		No change. We advise that this study also needs to be acknowledged and considered within an updated IPSFMP.		Appendix 8.4: Black Seabream Underwater Noise Technical Note and Survey Results, Volume 4 [PEPD-023] , issued in January 2024, contains the results of the extended underwater noise baseline monitoring campaign from March to July 2023. The updated version of Appendix 8.3 – Underwater noise study for sea bream disturbance, Volume 4 of the ES [REP2-011] , which contains the results from the 2022 monitoring survey, is also available in the Examination Library. The In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), also provides a summary of surveys.

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	data is provided as soon as possible.		information within this report does not change our position.						
E36	We advise that the efficacy of the measures in the environmental conditions of the Rampion 2 location has not been satisfactorily demonstrated. Based on the lack of evidence to derive a suitable threshold, even if the mitigation measures could be proven to achieve the level proposed, we advise this would not be sufficient to justify a Negligible magnitude of impact. We advise that in the context of the MCZ this should be a Major impact (i.e. there is a significant risk of the activity hindering the MCZ conservation objectives). We advise that the magnitude of impact is revised.		No change		No change		No change		<p>The Applicant confirms that the magnitude of impact is determined after the implementation of the proposed embedded environmental mitigation (C-265, C-274, C-280, C-281 all secured in Condition 11(1)(k) of the dMLs (Schedules 11 and 12 of the draft DCO [REP4-004] (updated at Deadline 5)) during the black bream nesting season, which will ensure that the predicted noise levels at the black seabream nesting areas within the Kingmere MCZ do not exceed the 141dB level that could (on a precautionary basis) elicit a response from black seabream. Therefore, with the implementation of the proposed mitigation measures, the Applicant is confident that there will be a Negligible magnitude of impact, and therefore a Minor Significant effect.</p> <p>Information on the efficacy and limitations of noise abatement systems was provided in Appendix I MM: Noise Abatement Systems in the Applicant's Responses to Examining Authority's Written Questions [REP3-050] submitted into Examination at Deadline 3. Further work has been undertaken to provide a comparison of the environmental conditions at the Proposed Development with other projects where Noise Abatement Systems (NAS) have been deployed. The outputs of this work are detailed in Information to support efficacy of noise mitigation / abatement techniques with respect to site conditions at Rampion 2 Offshore Windfarm [REP4-067] and were incorporated into the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5).</p>
E37	Given the proximity of Kingmere MCZ to both the cable corridor and the array, and the fact this is a designated feature of this protected site, their sensitivity to disturbance during the breeding/spawning season,		No change		No change		No change		<p>The Applicant highlights that the sensitivity of black seabream to underwater noise is the primary measure of sensitivity to the impact. As detailed in paragraph 8.9.48 of Chapter 8: Fish and shellfish Ecology, Volume 2 [APP-049] (updated at Deadline 5), black seabream have swim bladders that are close, but not intimately connected to the ear, it is on this basis that the receptor is considered to be of medium</p>

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	Natural England advise that the sensitivity of this feature should be high. We advise that the sensitivity is revised.								sensitivity. Due consideration of the spawning behaviours of black seabream within the Kingmere MCZ is incorporated into the underwater noise modelling, whereby the receptor is considered a stationary receptor, therefore assuming increased exposure to underwater noise when guarding their nests. Furthermore, consideration of effects on life-cycle aspects is also given in terms of impact consequence (i.e significance of effect), within the assessment. In relation to potential habitat disturbance impacts (including potential impacts from increased SSC and smothering) from works undertaken within the cable corridor, the Applicant confirms the sensitivity of black bream has been assessed as high, and mitigation measures for disturbance to nesting areas in the ECC have been proposed in the In Principle Mitigation Plan for Sensitive Features [REP4-053] (updated at Deadline 5).
E38	Due to our disagreement with both the magnitude of impact assigned to this assessment and the sensitivity of the receptor, we do not agree that this impact can be considered not significant. We advise that this is revised in line with our comments above.		No change		No change		No change		The Applicant directs the Examining Authority to its responses to refs E36 and E37 of Applicants Responses to Relevant Representations [REP1-017] . The Applicant is confident that on the basis of the sensitivity and magnitude definitions, there are no significant effects on black seabream.
E39	We note that one short-snouted seahorse (<i>Hippocampus hippocampus</i>) was found in the October to November 2011 surveys and three in the February 2012 surveys. Two were found in the north-eastern part of the Rampion 1 array and two in the western part. We note that short-snouted seahorse were also found in three post-construction trawls conducted in the autumn. We note this is evidence of the potential for seahorse species to be present		No change		No change		No change		The Applicant is confident that based on these data presented in paragraph 8.6.66 to paragraph 8.6.68 of Chapter 8, Fish and shellfish ecology, Volume 2 of the Environmental Statement [APP-049] (updated at Deadline 5), seahorse numbers within the vicinity of the Proposed Development are generally low, and there are no records or data that suggest that the area is of particular importance for seahorse, even in the overwintering period when the species may move to deeper water areas. As detailed in paragraph 8.6.68 of Chapter 8, Fish and shellfish ecology, Volume 2 of the Environmental Statement [APP-049] (updated at Deadline 5), the greatest number of seahorses recorded in a survey were four short-snouted seahorses recorded during surveys at Rampion 1 offshore wind farm (E.ON, 2012a), although the

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	<p>in the area, particularly overwinter (when they are understood to move offshore). We advise that the fact that they have been found on multiple occasions from surveys that only offer a short snapshot in time, indicates their consistent presence, but that conclusions should not be drawn on them only being found in low numbers throughout the assessment based on this. The assessment should be updated to reflect the this.</p>								<p>Applicant notes that globally ecological data on seahorses is lacking due to their apparent patchy distribution and low density, as well as their cryptic nature (Foster and Vincent, 2004; Garrick-Maidment <i>et al.</i>, 2010). The Applicant has therefore undertaken a suitably precautionary assessment and assumed the presence of overwintering seahorse in the vicinity of the Proposed Development. Therefore, as detailed in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), the Applicant has committed to the use of Double Big Bubble Curtains (DBBC) (the most effective and reliable noise mitigation measure available) throughout the piling campaign. 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 qualifying features of MCZs. In comparison to the previous commitment to use at least one noise abatement system throughout the piling campaign (which assumed, at minimum, 6 dB reduction for all piling works), the Applicant highlights that this is a substantial additional commitment to mitigation. Commitment C-265 has been updated accordingly to reflect this proposed mitigation. The updated commitment is as follows:</p> <p>C-265: <i>“Double big bubble curtains will be deployed as the minimum single offshore piling 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:</i></p> <ul style="list-style-type: none"> <i>• sensitive receptors at relevant Marine Conservation Zone (MCZ) sites and reduce the risk of significant residual effects on the designated features of these sites;</i> <i>• spawning herring; and</i> <i>• marine mammals.”</i> <p>The mitigated impact ranges, with the implementation of DBBC, are presented in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5).</p>
E40	We seek clarification that that the locations modelled		No change		No change		No change		The Applicant clarifies that the East modelling location represents the eastern array boundary, which is closest to the

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	represent the closest location piling could occur in relation to each MCZ designated for seahorse. We advise clarity is provided and the assessment updated if needed.								<p>Beachy Head East and West MCZs. The portion to the north edge of this boundary is a Windfarm Separation Zone (where no WTGs can be built, defined on the Offshore Works Plan [APP-008], see Figure 5-14 in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), and no piling will occur further north than the location used for modelling. Therefore, this represents the worst-case modelling location in respect of seahorse and the Beachy Head East and West MCZs.</p> <p>In a meeting held on 28 June 2024, Natural England queried the worst-case underwater noise modelling location on the western boundary, with regard to the Selsey Bill and the Hounds MCZ. The piling location on the western boundary of the Order Limits was identified as the worst case location on account of the bathymetry of the site (the modelled location lies in an area of deeper water). Notwithstanding this, to provide reassurance to Natural England, the Applicant will submit additional figures into examination at Deadline 6, showing the worst case and mitigated underwater noise contours, relative to the Selsey Bill and the Hounds MCZ from the location closest to the MCZ on the western boundary of the Order Limits.</p>
E41	Given there are MCZs designated for seahorses surrounding the site, and seahorses were found during the Rampion 1 surveys, Natural England advise there does not appear to be any evidence to support the Applicant's statement that they are 'not present in significant numbers'. Additionally, it should be considered that a significant proportion of the local population may not have to be a large number. We advise that impacts on the scale of kilometres could span the entire range of local populations and		No change		No change		No change		<p>The Applicant is confident that based on these data presented in paragraph 8.6.66 to paragraph 8.6.68 of Chapter 8, Fish and shellfish ecology, Volume 2 of the ES [APP-049] (updated at Deadline 5), seahorse numbers within the vicinity of the Proposed Development are generally low, and there are no records or data that suggest that the area is of particular importance for seahorse, even in the overwintering period when the species may move to deeper water areas. As detailed in paragraph 8.6.68 of Chapter 8, Fish and shellfish ecology, Volume 2 of the ES [APP-049] (updated at Deadline 5), the greatest number of seahorses recorded in a survey were four short-snouted seahorses recorded during surveys at Rampion 1 offshore wind farm (E.ON, 2012a). Although the Applicant notes, that globally ecological data on seahorses is lacking, due to their apparent patchy distribution and low density, as well as their cryptic nature (Foster and Vincent, 2004; Garrick-Maidment <i>et al.</i>, 2010). The Applicant has therefore undertaken a suitably precautionary assessment</p>

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E42	<p>so potentially pose a significant risk. We advise the assessment is amended in line with our advice.</p> <p>Natural England understand the Applicant has predicted no overlap (of the underwater noise contours relevant to this impact) with the MCZs designated for seahorses. Based on the reasoning in our comment to 8.9.74, we do not agree that the Applicant can determine the risk of impacts on seahorses outside of the MCZ's is low when they could feasibly be present in the array area. Both species of the UK seahorses - spiny (<i>Hippocampus guttulatus</i>) and short-snouted - are protected under Section 9 of the Wildlife and Countryside Act 1981. We advise that the Applicant is aware that there is a possibility of seahorses being killed or injured, disturbed, or damage or destruction to their place of shelter or protection, all of which are offences under Section 9. We advise that it is therefore not appropriate to consider the magnitude of impact on</p>		No change		No change		No change		<p>and assumed the presence of overwintering seahorse in the vicinity of the Proposed Development. Therefore, as detailed in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5) the Applicant has committed to the use of DBBC throughout the piling campaign. The implementation of this mitigation will further reduce the impact ranges of underwater noise (including behavioural effect ranges) to sensitive features such as seahorse within the vicinity of Rampion 2.</p> <p>The mitigated impact ranges, afforded by the implementation of DBBC throughout the piling campaign, have been presented in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5).</p> <p>The Applicant is confident that based on these data presented in Chapter 8, Fish and shellfish ecology, Volume 2 of the Environmental Statement [APP-049] (updated at Deadline 5), seahorse numbers within the vicinity of the Proposed Development are generally low. The Applicant has undertaken a suitably precautionary assessment and assumed the presence of overwintering seahorse in the vicinity of the Proposed Development. Notwithstanding this, as detailed in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), the Applicant has committed to the use of DBBC throughout the piling campaign. The implementation of this mitigation will further reduce the impact ranges of underwater noise to sensitive features such as overwintering seahorse. Commitment C-265 has been updated accordingly to reflect this proposed mitigation. The updated commitment is as follows: C-265: "Double big bubble curtains will be deployed as the minimum single offshore piling 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:</p> <ul style="list-style-type: none"> • sensitive receptors at relevant Marine Conservation Zone (MCZ) sites and reduce the risk of significant residual effects on the designated features of these sites; • spawning herring; and • marine mammals."

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	seahorses to be negligible. We advise the assessment is amended in line with our advice.								The maximum injury (recoverable) ranges with the use of DBBC and assuming the worst case for a stationary receptor from successive piling of 4 pin piles on a multileg foundation at a deep water (east) location, remain localised, up to 2,100 m from the source. Taking into consideration the reduced impact ranges from the implementation of DBBC throughout the piling campaign, and the low numbers of seahorse dispersed into deeper waters during their overwintering phase, the risk of seahorses encountering noise levels that could result in injurious effects (203 dB SELcum) is very low.
E43	<p>"Natural England note that there is an interaction between the TTS contour and Beachy Head West MCZ. We note that the wording of commitment C-265 does not reflect the wording in the MCZ Assessment. Our understanding is the commitment is a minimum of one noise abatement measure, year-round. Please see our comment on 8.1.4 of the MCZ Assessment/the commitments on this. Based on this level of mitigation, we do not agree that the magnitude of impact can be consider negligible. We advise that an assessment with and without mitigation is provided to present the worst-case scenario.</p> <p>We advise that seahorses are a protected feature of the MCZ year-round, therefore any mitigation would also need to be proven to be below the threshold for TTS year-round</p>		Additional material was submitted at Deadline 1 which NE will respond to at Deadline 3.		Natural England have provided advice on the additional material submitted in Appendix E3. This information has not changed our position on this point.		No change		<p>As detailed in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), the Applicant has committed to the use of DBBC throughout the piling campaign (which offers a noise reduction of 15dB). 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 qualifying features of MCZs. In comparison to the previous commitment to use at least one noise abatement system throughout the piling campaign (which assumed, at minimum, 6dB reduction for all piling works), the Applicant highlights that this is a substantial additional commitment to mitigation.</p> <p>The Applicant confirms that as set out in the Commitments Register [REP4-057] (updated at Deadline 5), Commitment C-265 has been updated accordingly to reflect the proposed mitigation to use DBBC throughout the piling campaign. The updated commitment is as follows:</p> <p>C-265: <i>"Double big bubble curtains will be deployed as the minimum single offshore piling noise mitigation technology to deliver underwater noise attenuation for all foundation installation throughout the construction of the Proposed Development where percussive hammers are used in order to reduce predicted impacts to:</i></p> <ul style="list-style-type: none"> <i>sensitive receptors at relevant Marine Conservation Zone (MCZ) sites and reduce the risk of significant residual effects on the designated features of these sites;</i>

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	within the MCZ. We advise the assessment is amended in line with our advice, and that the further information is provided."								<ul style="list-style-type: none"> • spawning herring; and • marine mammals." <p>The mitigated TTS impact ranges, afforded by the implementation of DBBC throughout the piling campaign, have been presented relative to the MCZs within the vicinity of Rampion 2, of which seahorse are a qualifying feature, in Figures 5.1 and 5.2 of Applicant's Post Hearing Submission – Issue Specific Hearing 1 Appendix 9 – Further Information for Action Points 38 and 39 – Underwater Noise [REP4-061] (updated at Deadline 4). The mitigated impact ranges from the implementation of DBBC further mitigate the underwater noise contours away from the MCZs designed for seahorse. Therefore, the Applicant is confident that with the implementation of DBBC throughout the piling campaign, the magnitude of impact is negligible, and the Conservation Objectives of the MCZs will not be hindered. The mitigated impact ranges, with the implementation of DBBC, are also presented in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5).</p>
E44	We advise you refer to our comments on 3.1.1, 5.3.28 of the IPSFMP with regards to uncertainty over thresholds. Refer to IPSFMP comments.		No change		No change		No change		<p>The Applicant is confident that a suitably precautionary assessment has been undertaken to establish the potential impacts from underwater noise on seahorse. Furthermore, the Applicant would like to direct the Examining Authority to Appendix 11.3: Underwater noise assessment technical report, Volume 4 of the Environmental Statement (ES) [APP-149] (updated at Deadline 5), where the built-in precaution of the noise modelling is detailed.</p> <p>The Applicant maintains that a 141dB SELss behavioural threshold (based on 44 cm seabass, as reported in Kastelien <i>et al.</i> (2017)) is appropriate as the stricter suggested 135 dB SELss threshold represents only a brief startle response (sudden short-lived changes in swimming speed) in a species known to be particularly sensitive, sprat, and should not be considered appropriate to represent major behavioural changes that would constitute a failure to meet conservation objectives. As informed by Popper <i>et al.</i>, (2014), behavioural disturbances are considered to be long term changes in behaviour and distribution, and should not include effects on</p>

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									<p>single animals, or small changes in behaviour such as startle responses or minor movements. Furthermore, the use of a threshold based on startle responses of 44cm fish is considered appropriate based on the findings of Perodou and Nedelec (1980), who reported that all black bream individuals caught in the English Channel under 30cm were female, with males measuring >40 cm (black seabream are protogynous hermaphrodites, changing from female to male when they reach between 30 and 40 cm in length (Pawson, 1995)). This is also supported by Russell <i>et al.</i> (2014) and Millet and Loates (1997) (as cited in Vause and Clark., 2011) who report maximum lengths of 60cm. Therefore, 141 dB re 1 mPa² s is considered and appropriate behavioural response threshold, to define the potential for impacts on male black bream, exhibiting nest guarding behaviours. taking this into consideration, the behavioural impact threshold as defined by Kastelein <i>et al.</i> (2017) is slightly higher but still considered precautionary, and therefore a suitable threshold to apply to underwater noise sensitive receptors such as seahorse. It should be reiterated that, as stated in Chapter 8: Fish and shellfish ecology, Volume 2 of the ES [APP-049] (updated at Deadline 5), the Applicant does not support the application of the recommended 135 dB SEL contour to establish behavioural impact ranges for sensitive receptors. Specifically, this threshold is based on a study undertaken within a quiet loch on fish not involved in any particular activity (i.e. not spawning), and it is therefore not considered appropriate to use this threshold within a much noisier area such as the English Channel (which is subject to high levels of anthropogenic activity and consequently noise) as the fish within this area would reasonably be expected to be accustomed to higher levels of noise and would thus have a correspondingly lower sensitivity to disturbance by noise. Notwithstanding the above, as detailed in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5) the Applicant has committed to the use of DBBC throughout the piling campaign. 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 qualifying features of MCZs. The mitigated impact ranges afforded by the implementation of DBBC throughout the piling campaign have been presented</p>

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E45	As noted above for Beachy Head West MCZ there is overlap with the TTS contour, given TTS thresholds are likely to be significantly larger than those for behavioural disturbance logically behavioural disturbance is highly likely to occur. We note that the 135dB contour mapped on figure 8.20 (which does not appear to consider all WCS) gives an indication that there is a clear overlap with Beachy Head West MCZ and possibly other MCZ's. We advise that the WCS contour is mapped in relation to the lower figures quoted in the text for behavioural disturbance and the boundaries of the MCZ's are		No change		No change - please see further advice on this matter in Appendix E3.		We understand that the Applicant intends to submit further information in relation to this point at deadline 4. Natural England will review this information when it is received and provide a response.		<p>relative to the MCZs of which seahorse are a qualifying features in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), and the Applicant's Post Hearing Submission – Issue Specific Hearing 1 Appendix 9 – Further Information for Action Points 38 and 39 – Underwater Noise Revision B [REP4-061]. The mitigated impact ranges from the implementation of DBBC (as defined using the 141 dB SELss disturbance threshold), further mitigate the underwater noise contours away from the MCZs of which seahorse are a qualifying feature. It is worth noting that the mitigated impact ranges from the implementation of DBBC, as defined using the overly precautionary 135 dB SELss threshold (the use of which the Applicant does not support), also do not overlap with the MCZs. The mitigated noise contours are presented in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), and the Applicant's Post Hearing Submission – Issue Specific Hearing 1 Appendix 9 – Further Information for Action Points 38 and 39 – Underwater Noise Revision B [REP4-061].</p> <p>As detailed in the updated In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), the Applicant has now committed to the use of DBBC throughout the piling campaign. 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 MCZs within the vicinity of Rampion 2.</p> <p>Commitment C-265 has been updated accordingly to reflect this proposed mitigation. The updated commitment is as follows: C-265: <i>“Double big bubble curtains will be deployed as the minimum single offshore piling 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:</i> <ul style="list-style-type: none"> <i>sensitive receptors at relevant Marine Conservation Zone (MCZ) sites and reduce the risk of significant</i> </p>

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<p>included on this. We advise that a worst-case threshold is mapped and that the assessment is amended to account for the contours of this. We advise the mitigation measures would need to be proven to reduce this to a threshold level.</p>								<p><i>residual effects on the designated features of these sites;</i></p> <ul style="list-style-type: none"> • spawning herring; and • marine mammals.” <p>The mitigated impact ranges, afforded by the implementation of DBBC throughout the piling campaign, have been presented relative to the MCZs within the vicinity of Rampion 2, of which seahorse are a qualifying feature, in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5).</p> <p>The mitigated impact ranges from the implementation of DBBC (as defined using the 141 dB SELss disturbance threshold, which the Applicant maintains is an appropriate disturbance threshold for seahorse) further mitigate the underwater noise contours away from the MCZs designated for seahorse. Therefore, the Applicant is confident that with the implementation of DBBC throughout the piling campaign, the Conservation Objectives of the MCZs will not be hindered. The Applicant also wishes to highlight that the mitigated impact ranges from the implementation of DBBC, as defined using the overly precautionary 135 dB SELss threshold (the use of which the Applicant does not support), also do not overlap with the MCZs. The mitigated noise contours are presented in Figure 5.14 to Figure 5.17 of the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5).</p> <p>The Applicant also clarifies that the East modelling location represents the eastern array boundary, which is closest to the Beachy Head West MCZ. The portion to the north edge of this boundary is a Windfarm Separation Zone (where no WTGs can be built, defined on the Offshore Works Plan [APP-008]), see Figure 5-14 in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), and no piling will occur further north than the location used for modelling. Therefore, this represents the worst-case modelling location in respect of seahorse and the Beachy Head West MCZ.</p>	

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E49	Natural England advise that the impacts from direct disturbance from installation of the export cable and impacts from suspended sediment are dependent on Commitment 273. This is a seasonal restriction will be put in place to ensure offshore export cable corridor installation activities are undertaken outside the black seabream breeding period (March-July) to avoid any effects from installation works on black seabream nesting within or outside of the Kingmere MCZ. Natural England supports this measure. We advise that this should include all aspects of export cable installation, including but not limited to seabed preparation works, cable protection work, UXO works (which we understand would form part of a separate licence).		No change		No change. We advise that any commitment regarding this matter should be secured in an updated mitigation plan, which we are yet to receive for review.		We note that there has been no change to commitment 273 within the updated In Principle Sensitive Features Mitigation Plan provided at deadline 3. Therefore, until this is updated, this point still remains outstanding.		<p>In a meeting held on 28 June 2024, Natural England queried the worst-case underwater noise modelling location on the western boundary, with regard to the Selsey Bill and the Hounds MCZ. The piling location on the western boundary of the Order Limits was identified as the worst case location on account of the bathymetry of the site (the modelled location lies in an area of deeper water). Notwithstanding this, to provide reassurance to Natural England, the Applicant will share figures with Natural England following Deadline 5 and submit them into the examination at Deadline 6, this figures will show the worst case and mitigated underwater noise contours, relative to the Selsey Bill and the Hounds MCZ from the location closest to the MCZ on the western boundary of the Order Limits.</p> <p>The Applicant confirms that proposed in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5) and set out in the Commitments Register [REP4-057] (updated at Deadline 5), commitment C-273 (as secured in condition 11(1)(k) of the dMLs (Schedules 11 and 12 of the draft DCO [REP4-004] (updated at Deadline 5)), has been updated to the following: <i>"A seasonal restriction will be put in place to ensure Offshore Export Cable Corridor activities (including: construction and installation, preparatory works during cable installation, UXO clearance, preventive or scheduled maintenance, inspections and decommissioning) are undertaken outside the black seabream breeding period (1st March- 31st July inclusive) to avoid any effects from installation works on black seabream nesting within or outside of the Kingmere MCZ. This does not apply to emergency work required to maintain the operation, safety and integrity of the infrastructure."</i> The Applicant confirms that UXO removal will be sought in a separate future Marine License application, when there is greater certainty on the quantum of UXO requiring clearance, prior to construction, using high resolution geophysical survey data.</p>

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E50	<p>We advise that should any activities not be included we would have concerns regarding the impacts of these.</p> <p>Commitments 269 and 270 include: • 'Cable routing design will be developed to ensure micrositing where possible to identify the shortest feasible path avoiding areas considered to potentially support black seabream nesting'. • 'A working separation distance (buffer) will be maintained wherever possible from sensitive features, notably black seabream nesting areas, as informed by the outputs of the physical processes assessment, to limit the potential for impacts to arise (direct or indirect)'. We advise that there needs to be clear prioritisation in this measure with micrositing (avoiding) being the preference in the first instance and if there is absolutely no way of avoiding black seabream nesting habitats, the shortest path should be taken as a mitigation measure. We advise this measure does not guarantee no direct impacts (as stated in the assessment), it only seeks to minimise them. We advise a robust pre-construction survey plan and a final micrositing plan are agreed with Natural England. Until this data is available the assessment should assume that it may not</p>		No change		No change		No change		<p>The Applicant affirms that avoidance of sensitive features through micro-siting is the preference in the first instance; subsequently if this proves impossible for certain areas then mitigation measure (Commitment 269 in the Commitments Register [REP4-057] (updated at Deadline 5) as secured in Condition 11(1)(k) of the dMLs (Schedules 11 and 12 of the draft DCO [REP4-004] (updated at Deadline 5)) will then be applied. The Applicant notes that micrositing to take account of environmental constraints and the outcome of pre-construction surveys (under Condition 11(1)(j) and Condition 16, is secured through the Design Plan to be submitted and approved under Condition 11(1)(a), and specifically Condition 11(1)(a)(v) of the draft DCO [REP4-004] (updated at Deadline 5)).</p> <p>The Applicant confirms that the pre-construction survey plan and the final sensitive features mitigation plan will be developed in consultation with Natural England.</p> <p>The mitigation measures as set out in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5) (and secured in Condition 11(1)(k) of the dMLs (Schedules 11 and 12 of the draft DCO [REP4-004] (updated at Deadline 5)) provide for the situation where avoidance of specific habitat features may not be possible, and the assessment undertaken has been presented on that basis.</p> <p>The Applicant also confirms that Commitments 269, 270 and 273 (as detailed in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5) and the Commitments Register [REP4-057] (updated at Deadline 5) (secured in Condition 11(1)(k) of the dMLs (Schedule 12 of the draft DCO [REP4-004] (updated at Deadline 5)) will apply to the placement of all infrastructure and construction equipment within the export cable corridor and include the operation and maintenance phase.</p>

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	<p>be possible to avoid potential black seabream nesting habitats. We advise this measure should apply to the placement of all infrastructure, construction equipment and include the operation and maintenance phase. We advise a commitment to the separation distance that will be employed should be made, and also a distance from the edge of the cable corridor where works will not occur. Should this not be possible in an area it should be highlighted in the final micro-siting plan and discussed with Natural England.</p>								<p>The buffering distances between the relevant receptors and the proposed locations of the works are set out in Section 5.2 of the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5) as informed by findings of the physical processes assessment work.</p> <p>This commitment is included within the measures set out within the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5) (as secured in Condition 11(1)(k) of the dMLs Schedules 11 and 12 of the draft DCO [REP4-004] (updated at Deadline 5)), which also details the approach to establishing buffers for sensitive receptors where avoidance can be achieved within the routeing design. Where avoidance is possible, the buffer will be set based on the potential for significant effects to arise on the receptor as informed by the physical processes assessment. The Applicant considers this to be more appropriate than a blanket buffer commitment.</p>
E51	<p>It is recognised that 'Seabed disturbances resulting from construction activities such as cable trenching within The black seabream nesting area may damage nests and could potentially prevent future use of the seabed for nest building if a physical change in its character in discrete locations was to occur.. the cable installation may, in discrete locations, have a long-term negative effect on areas of high intensity black seabream nesting if the physical nature of the seabed habitat is altered'. Natural England also considers there may be long term habitat loss during operation and maintenance, as 'it is recognised that some nesting habitat may potentially be lost through the introduction</p>		No change		No change		No change		<p>The Applicant notes that each eventuality from all phases of the Proposed Development in respect to black bream nesting habitats within and outside of the Kingmere MCZ, have been taken into consideration in Chapter 8: Fish and Shellfish Ecology, Volume 2 [APP-049] (updated at Deadline 5). Specifically, the potential for impacts on black bream nesting habitats from the operation and maintenance phase of the Proposed Development, including the installation and potential replacement of cable protection, have been assessed in Section 8.10 of Chapter 8: Fish and Shellfish Ecology, Volume 2 [APP-049] (updated at Deadline 5).</p> <p>The process for mitigating against the potential for impacts on sensitive features to ensure all effects are minimised, inclusive of impacts and effects from the operation and maintenance phase is detailed in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5). This Plan details the hierarchy of mitigation, following an avoid, reduce, mitigate process. Where mitigations are required during the operation and maintenance phase of the development, the principles of the mitigation have been captured in the Outline Offshore Operations and Maintenance Plan [REP3-043] (updated at Deadline 5) at high level. The details of which will be finalised once the final</p>

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	<p>of cable protection'. Even with the mitigation proposed there is still a residual risk of unidentified nesting areas being impacted/ or not being avoidable/requiring cable protection, therefore we do not agree that there will be no long-term loss of habitat and that this can be assessed as Negligible. Additionally, there could be ongoing direct and indirect impacts from operations and maintenance (O&M) works on the export cable corridor. We advise that long term and ongoing loss of black seabream nesting habitat is recognised as potentially being unavoidable and having ongoing impacts through the lifetime of the project. In relation to Operation and Maintenance works we advise a Disturbance Management Plan (DMP) is produced. This should set out impacts from each aspect of these works and present measures (and supporting information of efficacy) to avoid/reduce/mitigate the disturbing effect arising from operations such as cable repair, replacement, reburial operations in or adjacent to sensitive features including Kingmere MCZ and locations suitable for black seabream nests. Adherence to the measures listed in the DMP could/should be a condition of the DCO/dML.</p>								<p>design information is available, and captured in the Final Offshore Operations and Maintenance Plan post-consent (as required under the deemed Marine Licence (dML) Condition 3 in Schedules 11 and 12 of the draft DCO [REP4-004] (updated at Deadline 5)).</p>

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E52	Natural England question why there would be direct disturbance outside of the DCO boundary of the cable corridor (e.g., for anchor placement). We advise that activities are only permitted within the DCO boundary, and that anchor placement potentially in the MCZ outside of the DCO boundary has not been assessed. We advise this is clarified in the assessment.		No change		No change		Please see our response to point F24 of the benthic ecology tab.		The Applicant confirms that there will be no direct disturbance outside of the DCO boundary of the cable corridor. The statement made in the ES was a general assertion that, should anchoring of vessels occur in areas adjacent to the Proposed Development works, no significant effects would be anticipated. The Applicant also confirms that no such activities would be undertaken within the MCZ boundaries, or indeed those of any designated site (this is now captured in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5)), and further notes that anchoring vessels at sea is not a licensable activity. Furthermore, the Applicant has committed to a seasonal restriction to ensure no Offshore Export Cable Corridor activities (including construction and installation, preventive or scheduled maintenance, inspections and decommissioning) are undertaken outside the black seabream breeding period (1st March-31st July inclusive) (C-273, Commitments Register [REP4-057] (updated at Deadline 5) as secured in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), Condition 11(1)(k) of the dML, Schedules 11 and 12 of the draft DCO [REP4-004] (updated at Deadline 5)).
E53	'The offshore export cable routeing design will target areas of the seabed that enable maximising the potential for cables to be buried, thus providing for seabed habitat recovery in sediment areas and reducing the need for secondary protection and consequently minimising any potential for longer-term residual effects'. 'Adoption of specialist offshore export cable laying and installation techniques will minimise the direct and indirect (secondary) seabed disturbance footprint to reduce impacts, which will provide mitigation of impacts to potential (unknown)		No change		No change		No change		Geotechnical information will be collected after consent is granted and will be provided to potential cable installers during the tendering for these works. A technical evaluation of the methods proposed by the tendering parties will be undertaken as the start of cable burial risk assessment process and used as part of the decision-making process to select the preferred supplier. The aim of the project will be to select a contractor who, with their selected equipment and proposed methods, will be able to bury the subsea cables in accordance with the commitments and the mitigation secured through the dML and minimise the likelihood of future cable exposures. This will help the project avoid having to undertake expensive remediation works. The final cable burial risk assessment will be completed by the party contracted to undertake these works during the detailed design stage and therefore cannot be provided during the Examination. An Outline Cable Burial Risk Assessment (Document Reference 8.85) has been submitted at Deadline 5.

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	<p>black seabream nesting locations, where avoidance is not possible. The Applicant will seek to utilise the most appropriate technology available at the time of construction to reduce the direct footprint impact from cutting machinery.' Whilst Natural England support cable burial as the most preferable form of cable protection and the potential for this to minimise the long-term effects. However, we understand that there are areas where the Applicant does not anticipate cable burial being possible and that up to 54% of the export cable corridor may require mechanical trenching, and that up to 20% of the corridor will need cable protection. We advise that it should be made clear across the documentation that there are clear limitations in the applicability of these measure across the whole cable corridor. Additionally, it should be recognised that methods such as mechanical trenching have the potential to reduce the likelihood of recovery of nesting habitats. Additionally, where cable protection is required this may represent a loss of suitable nesting habitat. Natural England advise that a cable burial risk assessment, which contains site specific geotechnical information, is provided during the Examination. Without this</p>								<p>The Applicant also confirms that the parameters detailed in Table 8-12 of Chapter 8 Fish and shellfish ecology, Volume 2 [APP-049] (updated at Deadline 5) are maximum parameters and assessment assumptions for the proposed development. The assessment is therefore based on a worst-case scenario for each receptor to establish the maximum potential adverse impact. The parameters provided for cable burial and cable protection are therefore inherently precautionary.</p>

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E54	<p>information, it would have to be assumed that the worst-case scenario would be realised. This includes cable protection and/or the most impactful trenching methodology being required in habitat suitable for black seabream nesting</p> <p>'An Outline Scour Protection and Cable Protection Plan (Document Reference 7.12)'. We advise that further detail is provided on how this plan will minimise long term loss of habitat in relation to black seabream and seahorses, and how this considers lessons learnt from Rampion 1.</p>		No change		No change		No change		<p>The Applicant notes that the primary approach to minimising the use of protection material is to achieve burial of cables. To this end, the Applicant has demonstrated its approach to, for example, targeting burial within paleocannels within the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5)), which also sets out its cable routing design methodology as well as through its submission of an Outline Cable Burial Risk Assessment (Document reference 8.85) and Outline Cable Specification and Installation Plan (Document reference 8.88) at Deadline 5. The Final documents will be required to accord with the Outline plans, as secured within Condition 11(1)(n) of the dMLs (Schedules 11 and 12 of the draft DCO [REP4-004] (updated at Deadline 5)). Maximising the opportunities for burial of cables provides the best way to protect these assets and minimise the use of secondary protection materials at the seabed surface, which is also economically advantageous for the Proposed Development.</p> <p>Commitment C-44 in the Commitments Register [APP-254] (updated at Deadline 5) sets out that a Final Scour Protection and Cable Protection Plan will be completed prior to construction commencing and submitted to the Marine Management Organisation (MMO) for approval and this is secured in Condition 11(1)(i) of the dMLs (Schedules 11 and 12 of the draft DCO [REP4-004] (updated at Deadline 5)). The potential dimensions of scour are described in Section 6, Appendix 6.3 Coastal processes technical report impact assessment, Volume 4 [APP-131] (updated at Deadline 5). The total volume and footprint of scour protection is secured under Condition 1(6) of the DMLs (Schedules 11 and 12 of the draft DCO [REP4-004]). The assessment identifies that</p>

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E55	It is stated in relation to impacts from EMF that the cables will be buried at a target depth of '1.0 to 1.5m below the seabed surface for the majority of the route'. We understand that burial could be challenging in rock and that there are areas where cable protection will be required. Additionally, it is unclear why there is a range of 1m -1.5m, and so we advise that information is provided to evidence that burial 1m would still provide sufficient mitigation. We advise that a Cable Burial Risk Assessment is provided at the consenting stage. If this target depth cannot be met along the route then this could invalidate the ES conclusions. It is suggested that cable protection would provide the same mitigation as burial, but we advise no evidence has been provided here to support this statement. We advise that should installation methods such as pinning be used to minimise impacts on habitats such as chalk, this could		No change		No change		No change		<p>seabed scour will be very localised and where it does develop, limited to the area immediately adjacent to the installed infrastructure. There is no predicted significant effect on wider scale sediment transport rates or patterns and will not result in any net change in the volume of sediment available in the local or regional system. The Applicant would like to take the opportunity to note that the Proposed Development was carefully sited to avoid any overlap with the MCZs, to ensure the protection of key habitats for seahorses and black seabream as features of the MCZs.</p> <p>The cable burial depths will be determined as set out in paragraph 4.3.54 within Chapter 4: The Proposed Development, Volume 2 [APP-045], which is reflected in commitment C-41 in the Commitments Register [REP4-057] (updated at Deadline 5) for the array cables, and secured under Condition 2(7) of the DMLs (Schedule 11 of the draft DCO [REP4-004]). A full Cable Burial Risk Assessment based on the results of the pre-construction surveys will be undertaken to identify and justify the proposed burial depths, when the final design parameters are determined post-consent. An Outline Cable Burial Risk Assessment (Document Reference 8.85) has been submitted at Deadline 5.</p> <p>In the event that it is not possible to bury a particular section of cable to the desired burial depth, cable protection will be considered as described in in paragraph 4.3.68 within Chapter 4: The Proposed Development, Volume 2 [APP-045]). The proposed burial of the subsea cables and/or the application of additional cable protection if needed, will provide a separation between buried cables and the seabed, and therefore will effectively mitigate against the potential for impacts from EMF on sensitive features.</p>

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E57	<p>invalidate EMF mitigation measures. We advise that further geotechnical information, including a Cable Burial Risk Assessment is provided.</p> <p>Natural England advises that the default should be that cable protection should be removed, to avoid permanent loss of habitat that could support features naturally found in the area, such as black seabream nests. We advise this should be made a commitment, but that the worst case of not being able to remove cable protection is considered.</p>		No change		No change		No change		<p>The Applicant confirms that the assessment of potential effects from the decommissioning of the proposed development on key fish and benthic receptors was undertaken in Section 8.11 and Section 9.11 of Chapter 8: Fish and shellfish ecology, Volume 2 [APP-049] (updated at Deadline 5), and, Chapter 9: Benthic subtidal and intertidal ecology, Volume 2 [REP4-018] (updated at Deadline 5) respectively. The assessments were based on the worst-case assumptions that all infrastructure would be removed during decommissioning, as this is anticipated to result in the greatest potential for disturbance. However, at this time no large offshore wind farm has been decommissioned in UK waters. Therefore, any future programme of decommissioning will be developed to ensure that the guidance and best practice at the time can be applied to minimise any potential impacts (as detailed in C-111 in the Commitments Register [REP4-057] (updated at Deadline 5) secured in Part 3, Requirement 11 of the draft DCO [REP4-004] (updated at Deadline 5)) in accordance with the Energy Act 2004).</p> <p>The Applicant also confirms that the following commitments have been made, as detailed in the Commitments Register [REP4-057] (updated at Deadline 5) and secured in Part 3, Requirement 11 of the draft DCO [REP4-004] (updated at Deadline 5) in accordance with the Energy Act 2004:</p> <ul style="list-style-type: none"> C-271: "The offshore export cable routing design will target areas of the seabed that enable maximising the potential for cables to be buried, thus providing for seabed habitat recovery in sediment areas and reducing the need for secondary protection and consequently minimising any potential for longer-term residual effects". C-289: "The Applicant will use secondary protection material, where practicable, that has the greatest

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E58	We advise that Black seabream show interannual variation in their nesting locations. Therefore, it cannot be assumed that these locations would be the same, many years down the line at decommissioning. We advise this supports the need for ongoing data collection.		No change		No change		No change		<p><i>potential for removal on Decommissioning of the Proposed Development</i>"; and</p> <ul style="list-style-type: none"> C-300: "Cable protection will be used that minimises the environmental impacts as far as practicable. At the point of selecting a cable protection supplier, consideration will be given to using the method of cable protection which is likely to be removable at decommissioning". <p>Any decommissioning activities and necessary surveys will be undertaken in accordance with guidance and best practice available at the time of decommissioning. The Applicant acknowledges there is likely to be a requirement for surveys to be completed prior to decommissioning commencing. Any future programme of decommissioning will be developed in consultation with the relevant statutory nature conservation bodies, and captured within a Decommissioning Plan (as detailed in C-111 of the Commitments Register [REP4-057] (updated at Deadline 5) secured in Part 3, Requirement 11 of the draft DCO [REP4-004] (updated at Deadline 5)) in accordance with the Energy Act 2004).</p>
E59	We advise clarity is provided on the information used to generate the 100km noise buffer for cumulative effects. We advise you refer to our benthic comments in relation to possible cumulative effects with aggregates licences in relation to sedimentation. We advise evidence is provided to support this and that are benthic comments are referenced.		No change		No change		No change		<p>A noise buffer of 100 km for cumulative effects is a highly conservative screening range, that encompasses any feasible propagation of underwater noise associated with an offshore wind project which would be detectable above background levels. The Applicant also notes that the 100 km radius is also far greater than all modelled impact ranges for underwater noise with respect to fish receptors, as set out within Appendix 11.3: Underwater noise assessment technical report, Volume 4 [APP-149] (updated at Deadline 5) and therefore represents a precautionary screening range for cumulative projects. The Applicant directs Natural England to its response to ref F37 of Applicant's Responses to Relevant Representations [REP1-017] regarding possible cumulative effects with aggregates licences in relation to sedimentation.</p>
E60	Natural England seek clarification that the graphic demonstrates the absolute worst case in terms of spatial		No change		No change		No change		<p>The Applicant confirms that as detailed in paragraph 7.2.5 of the Draft Marine Conservation Zone Assessment [APP-040], the noise modelling scenario presented in Graphic 1-1 represents the simultaneous piling of multileg foundations,</p>

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	<p>overlap with designated sites, as no explanation is provided as to what scenario this represents. Additionally, we note that the contours shown on this graphic do not consider behavioural impacts, and neither does the noise Zol (Zone of Influence) that is used to screen impacts (Table 5.1). Given this is critical to the assessment of MCZ features, such as black seabream and seahorses, we advise this contour is included. We therefore advise the screening decisions should not rely on this Zol as drawn. We advise that currently viewed in isolation this graphic does not provide a clear understanding of the issues to the reader. We advise all noise modelling/figures should include the boundary of the MCZ's. We advise confirmation is provided in the report of what scenario this represents, and that it is the worst case. We advise that the noise Zol is updated to include behavioural impacts in relation to specific species. We advise that behavioural thresholds are still a key area of disagreement between Natural England and the Applicant.</p>								<p>which is the worst-case scenario for underwater noise on MCZs with noise sensitive features, such as black seabream and seahorses. The contours depicted represent the accepted criteria for onset mortality or mortal injury (207 dB SELcum), recoverable injury (203 dB SELcum) and temporary threshold shift (186 dB SELcum). As noted in response to E62 below, the Applicant highlights that the 100 km radius is also far greater than all modelled impact ranges (including behavioural impact ranges) for underwater noise with respect to fish as noise sensitive receptors, as set out within Appendix 11.3: Underwater noise assessment technical report, Volume 4 [APP-149] (updated at Deadline 5) and therefore represents a precautionary screening range. The Zol used for screening other impacts, for example sedimentation, is based on the maximum spring tidal excursion from the Proposed Development and again is considered by the Applicant to be both appropriate and precautionary. Notwithstanding this, the Applicant has presented the behavioural response impact contours (based on the 141 dB threshold as defined by Kastelein <i>et al.</i>, 2017) relative to the Kingmere MCZ, the Beachy Head East and West MCZs and the Selsey Bill and the Hounds MCZ in Figures 5.14 and 5.15 of the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5)). The Applicant considers the disturbance threshold of 141 dB SELss as a suitably precautionary behavioural impacts threshold, as it is based on a short-lived startle response observed in sea bass. It is worth noting that the mitigated impact ranges from the implementation of DBBC, as defined using the overly precautionary 135 dB SELss threshold (the use of which the Applicant does not support), also do not overlap with the MCZs. The mitigated noise contours are presented in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), and the Applicant's Post Hearing Submission – Issue Specific Hearing 1 Appendix 9 – Further Information for Action Points 38 and 39 – Underwater Noise Revision B [REP4-061].</p>
E63	<p>Natural England notes that EIA terminology and methodology to assess impacts are being applied throughout the MCZ</p>		No change		No change		No change		<p>The Applicant considers it has appropriately applied the assessment outcomes from the EIA relating to potential impacts arising on MCZ features, or relevant components of those features, before providing a concluding statement on the</p>

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	<p>Assessment. For clarity, the MCZ Assessment should seek to define and understand the potential of the conservation objectives being hindered by external activities/impacts. We advise that to avoid confusion the MCZ Assessment should not use EIA terminology. Additionally, we note that our comments within the thematic chapters regarding significance of effect and magnitude also apply to the MCZ assessment where the Applicant has brought forward these conclusions into it. We advise the MCZ Assessment is revised accordingly.</p>								<p>potential for hindrance of the Conservation Objectives for each feature within the Draft Marine Conservation Zone Assessment [APP-040]. In regards to the comments on determination of impact magnitude and significance of effect, the Applicant has responded to each item raised by Natural England in Applicants Responses to Relevant Representations [REP1-017] (see responses to refs E29, E37-E39, E43 and E44 above). The Applicant considers the assessment presented within the ES to be robust and appropriate, and on this basis is not intending to change its findings.</p>
E64	<p>We note that indirect impacts that were assigned a 'negligible' magnitude in the ES and have therefore been screened out and not taken to a stage 1 MCZ Assessment. We advise that our comments on the relevant chapters are taken into account and this screening is adjusted as necessary. Furthermore, the different impacts of the proposal on the MCZ features in question should be considered cumulatively rather than in isolation to avoid 'salami-slicing' the overall impact. We advise that our comments on the relevant thematic chapters are considered against any conclusions made in the MCZ Assessment.</p>		No change		No change		No change		<p>The Applicant considers the assessment presented within the MCZ assessment to be robust and appropriate. The Applicant is confident that, taking into consideration the mitigation measures as detailed in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), no cumulative effects on the conservation objectives of the MCZs will occur. Such mitigations include the use of NAS, piling zoning, and sequencing to mitigate against impacts from underwater noise, and a seasonal restriction for export cable corridor activities, and proposals for micrositing around priority habitats.</p> <p>The Applicant confirms that commitment C-273 has been updated to the following: C-273: "A seasonal restriction will be put in place to ensure Offshore Export Cable Corridor activities (including: construction and installation, preparatory works during cable installation, UXO clearance, preventive or scheduled maintenance, inspections and decommissioning) are undertaken outside the black seabream breeding period (1st March- 31st July inclusive) to avoid any effects from installation works on black seabream nesting within or outside of the Kingmere MCZ. This does not apply to emergency work</p>

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E65	Natural England advises that cable repair, replacement and reburial as part of O&M activities in proximity to Kingmere MCZ have the potential to cause impacts that have not been included in the screening. Natural England advises that these impacts should be screened in.		No change		No change		No change		<p>required to maintain the operation, safety and integrity of the infrastructure.”.</p> <p>Commitment C-265 has been updated accordingly to reflect the Applicants commitment to use DBBC throughout the piling campaign. The updated commitment is as follows: C-265: “Double big bubble curtains will be deployed as the minimum single offshore piling 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:</p> <ul style="list-style-type: none"> • sensitive receptors at relevant Marine Conservation Zone (MCZ) sites and reduce the risk of significant residual effects on the designated features of these sites; • spawning herring; and • marine mammals.” <p>The Applicant notes that in relation to the same effects arising from construction as assessed in Chapter 8: Fish and Shellfish Ecology, Volume 2 [APP-049] (updated at Deadline 5), no significant effects were concluded. Therefore, considering the low order impacts arising from the short term and intermittent maintenance activities associated with cable repair, replacement and reburial, any impacts from these activities would be substantially less and therefore also not significant. It is on this basis that the Applicant screened such impacts out for fish and shellfish features of the Kingmere MCZ.</p> <p>Notwithstanding this, the Applicant has made the following commitment, to mitigate against any potential impacts to qualifying features of the Kingmere MCZ, to ensure the Conservation Objectives are not hindered: C-273 - " A seasonal restriction will be put in place to ensure Offshore Export Cable Corridor activities (including: construction and installation, preparatory works during cable installation, UXO clearance, preventive or scheduled maintenance, inspections and decommissioning) are undertaken outside the black seabream breeding period (1st March- 31st July inclusive) to avoid any effects from installation works on black seabream nesting within or outside</p>

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E67	It is suggested that 'The maximum design scenarios (spatial and temporal) with respect to underwater noise relates to the simultaneous and sequential piling of pin piles: - Spatial worst case - Simultaneous installation of jacket foundations. (Piling of 396 pin piles (4 pin piles piled simultaneously at both the East and West piling locations in the array area)), driven with a 2,500 kilojoule (kJ) hammer energy; - Temporal worst case - Sequential piling of 396 pin piles (pin piles piled sequentially at separate locations within a period of 24 hours), driven with a 2,500kJ hammer energy'. This is not the same as the Maximum Design Scenario (MDS) presented in the fish and shellfish chapters, which includes detailed parameters including, for example, number of piles per day. We advise clarity is provided on why this differs. We advise that you refer to our more detailed comments on the fish and shellfish chapter on this. We advise that a clear worst-case scenarios are presented across all documents, with any difference explained. We advise clarity is provided on the modelled scenario used to inform the		No change		No change		No change		of the Kingmere MCZ. This does not apply to emergency work required to maintain the operation, safety and integrity of the infrastructure." The Applicant directs Natural England to the Applicants response to ref E6 above.

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E68	<p>assessment and included on the graphic.</p> <p>Notwithstanding our comments regarding the appropriateness of using of EIA terminology in the MCZ Assessment, we advise that clarity is provided where there are differences between the magnitude of impact and sensitivity applied between the two assessments. We advise any differences are recognised and clearly justified. Please refer to our chapter comments with regards to the magnitude of impact. We do not agree with the negligible magnitude of impact applied here. Please see comments on the chapter above. We advise any differences are recognised and clearly justified. Please refer to our chapter comments with regards to the magnitude of impact.</p>		No change		No change		No change		<p>The Applicant considers it has appropriately applied the assessment outcomes from the EIA relating to potential impacts arising on MCZ features, or relevant components of those features, before providing a concluding statement on the potential for hindrance of the Conservation Objectives for each feature within the draft Marine Conservation Zone Assessment [APP-040].</p> <p>In regard to the comments on determination of impact magnitude and significance of effect, the Applicant has responded to each item raised by Natural England in Applicants Responses to Relevant Representation [REP1-017] (see responses to ref E29, E37-E39, E43 and E44). The Applicant considers the assessment presented within the ES to be robust and appropriate, and on this basis is not intending to change its findings.</p> <p>The Applicant confirms that within the Marine Conservation Zone Assessment [APP-040], and Chapter 8: Fish and Shellfish Ecology, Volume 2 [APP-049] (updated at Deadline 5), black seabream have been assigned a sensitivity of Medium to underwater noise, on the basis that the receptor has a swim bladder that is close but not intimately connected to the ear.</p> <p>A negligible magnitude of impact has been assigned when regarding impacts from underwater noise on black bream within the Kingmere MCZ. This is due to the lack of overlap from underwater noise contours for injurious effects, and the application of mitigation for TTS and behavioural effects (as detailed in full in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5)). The Applicant confirms that the assessment presented in the Chapter 8: Fish and Shellfish Ecology, Volume 2 [APP-049] (updated at Deadline 5), assesses the potential for impacts on black bream at a population level (with a focus on areas of primary importance to black seabream including areas outside of the Kingmere MCZ such as nesting areas within the ECC), and the Marine Conservation Zone</p>

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E69	Natural England agrees with the sensitivity assigned to the features of Kingmere MCZ in relation to increases in suspended sediment concentrations (SSC) and sediment deposition, as these are in line with our advice on operations. However, based on the fact the 500m buffer does overlap with an area of Kingmere MCZ, we do not agree with the assessment of a minor magnitude of impact. We advise that the magnitude of impact should be revised to consider the actual impact on the area of overlap, as opposed to contextualising this in relation to the site as a whole.		No change		No change		No change		<p>Assessment [APP-040], assesses the potential for impacts to qualifying features within the Kingmere MCZ, and the potential for hindrance of the Conservation Objectives of the Kingmere MCZ.</p> <p>The Applicant is confident that a suitably precautionary assessment was undertaken in relation to the potential for impacts to features of the Kingmere MCZ, as informed by physical processes modelling. Notwithstanding this, the Applicant has committed to a seasonal restriction to ensure offshore export cable corridor installation activities are undertaken outside the black seabream breeding period (March-July) to avoid any effects from installation works on black seabream nesting within or outside of the Kingmere MCZ (C-273, Commitments Register [REP4-057] (updated at Deadline 5) as secured in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), Condition 11(1)(k) of the dML, Schedules 11 and 12 of the draft DCO [REP4-004] (updated at Deadline 5)).</p>
E70	Natural England advise that July should not be seen as less important in relation to the potential to hinder the conservation objectives of Kingmere MCZ. Whilst we agree that it appears from the aggregates data that the levels of spawning/nesting may be lower in July, this difference does not represent evidence that this period is not important to designated bream. It is thought possible that later spawning could be an important 'last attempt' if spawning has		No change		No change		We advise that as detailed in appendix E4 this remains Natural England's advice on this issue.		<p>Following a detailed assessment undertaken on a precautionary basis, as detailed in Chapter 8: Fish and Shellfish Ecology, Volume 2 [APP-049] (updated at Deadline 5), the Applicant is confident that a full piling restriction from 1 March to 31 July is not appropriate or required to avoid significant population level effects on nesting black bream.</p> <p>The Applicant has maintains their position that the proposed mitigation measures as detailed in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5) will ensure no hindrance to the conservation objectives of the Kingmere MCZ. The Applicant maintains their position that a full piling restriction from 1 March to 31 July (as recommended by Natural England) is disproportionate to the risk of an impact arising that could result in significant population level effects on nesting black bream. The Applicant</p>

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	been unsuccessful earlier in the season. We advise that July should be consider equally important in line with the conservation advice.								reiterates that a full piling exclusion from March-July inclusive would also have significant issues for the practical development of the Proposed Development. Please refer to the Applicant's response to ref FS2.7 in Table 2-1 above where this is detailed further. The Applicant has proposed various mitigation measures during the black bream nesting season from March through to July. These measures include the use of noise abatement systems (DBBC and another noise abatement measure), a sequencing approach to piling starting in locations furthest from the MCZ, and the definition of piling exclusion zones (as detailed in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), the delivery of which secured in Condition 11(1)(k) of the dMLs (Schedules 11 and 12 of the draft DCO [REP4-004] (updated at Deadline 5)). Through the application of a variety of mitigation measures during the nesting season, the Applicant is confident that piling operations will not hinder the Kingmere MCZ conservation objectives.
E71	We advise that it has not been demonstrated that the mitigation hierarchy has been followed in relation to underwater noise impacts from piling on black seabream. The Applicant should demonstrate how they have considered avoiding impacts in the first instance and, wherever possible, chosen options which reduce or eliminate such impacts. Where impacts are unavoidable, suitable/proven mitigation measures, accompanied by robust scientific evidence of their efficacy, should be proposed. However, the Applicant proposes piling during this period without the adoption of scientifically robust mitigation measures.		No change		No change		No change		The Applicant notes that each eventuality from all phases of the Proposed Development in respect to black bream nesting habitats, have been taken into consideration in Chapter 8: Fish and Shellfish Ecology, Volume 2 [APP-049] (updated at Deadline 5). The process for mitigating against the potential for impacts on sensitive features to ensure all effects are minimised, is detailed in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5). This Plan details the hierarchy of mitigation, following an avoid, reduce, mitigate process. In terms of avoidance with respect to noise impacts, while possible the Applicant refers to its response to ref FS2.1 and FS2.7 in respect of the disproportionate impact such an undertaking would have on the Proposed Development. Where mitigations are required the principles of the mitigation have been captured in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5) at high level. The details of which will be finalised once the final design information is available and captured in the Final Plan (as secured in condition 11(1)(k) of the dMLs (Schedules 11 and 12 of the draft DCO [REP4-004] (updated at Deadline 5)).

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E72	It is stated that 'Details of available mitigation technology have been presented to provide confidence that the required levels of noise attenuation can be delivered (either through one of the examples given, or through other future potential mitigation technology) and can therefore be relied upon to avoid potentially significant effects that may arise in the absence of mitigation'. Natural England advise that insufficient evidence has been presented to provided certainty that these measures can achieve the levels of attention proposed within the specific environmental conditions present at the construction site of Rampion 2. Natural England has concerns about the approach of effectively pushing this issue to post consent, given it may still not be possible to resolve at that stage. We advise		No change		No change		We have provided comments on the updated information provided at deadline 3 within appendix E4. We understand the Applicant intends on submitting further information on this topic at deadline 4, which we will review and provide our advice on.		Information on the efficacy and limitations of noise abatement systems was provided in Appendix I MM: Noise Abatement Systems in the Applicant's Responses to Examining Authority's Written Questions [REP3-050] submitted into Examination at Deadline 3. Further work has been undertaken to provide a comparison of the environmental conditions at the Proposed Development with other projects where Noise Abatement Systems (NAS) have been deployed. The outputs of this work are detailed in Information to support efficacy of noise mitigation / abatement techniques with respect to site conditions at Rampion 2 Offshore Windfarm [REP4-067] and were incorporated into the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated and Deadline 5). Information on the efficacy and limitations of noise abatement systems was provided in Appendix I MM: Noise Abatement Systems in the Applicant's Responses to Examining Authority's Written Questions [REP3-050] submitted into Examination at Deadline 3. Further work has been undertaken to provide a comparison of the environmental conditions at the Proposed Development with other projects where Noise Abatement Systems (NAS) have been deployed. The outputs of this work are detailed in Information to support efficacy of noise mitigation / abatement techniques with respect to site conditions at Rampion 2 Offshore Windfarm [REP4-067] and were incorporated into the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated and Deadline 5).

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E73	<p>that certainty of provision of the commitments is not the same thing as certainty that the commitments will be sufficient to prevent the conservation objectives of a designated site being hindered. The mitigation technology proposed has not been used in like for like conditions as Rampion 2. We encourage the Applicant to trial and monitor the noise attenuation achieved by the mitigation outside of the sensitive period for black seabream and present findings to the MMO and Natural England for review. Without such evidence we cannot agree that the conservation objectives of Kingmere MCZ will not be hindered.</p> <p>Natural England advises that careful consideration is given as to whether a seasonal restriction is a means of proceeding with the proposal 'in another manner'. Natural England advises that based on the information provided to date, the seasonal restriction stipulated above appears to be the only option that would avoid the need for the decision-maker to proceed to the subsequent steps of the MCZ assessment process i.e. a Stage 2 Assessment. Therefore, as the Applicant has not included the seasonal restriction in its entirety in the Rampion 2</p>		<p>Natural England had a meeting with the Applicant on the 8/04/2024. Within this meeting we reiterated our advice that as the Applicant has still not committed to a seasonal restriction in its entirety, we advise that they begin development</p>		<p>We note that the Applicant is still proposing piling activities during the sensitive season for black seabream. In the absence of any further mitigation being proposed, we welcome the Examining Authority's request</p>		<p>We understand that the Applicant is hoping to submit without prejudice MEEB information at deadline 4, which we will review when it is available.</p>		<p>Please refer to the Applicants response to ref FS2.1 in Table 2-1 above on whether a seasonal restriction is a means of proceeding with the proposed development.</p> <p>The Applicant maintains its position that a full piling restriction from 1 March to 31 July is disproportionate to the risk of an impact arising that could result in significant population level effects on nesting black seabream. Through the application of a variety of mitigation measures (as detailed in the, In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5)), which will be secured through implementation of an approved Sensitive Features Mitigation Plan ((secured in Condition 11(1)(k) of the dMLs (Schedules 11 and 12 of the draft DCO [REP4-004] (updated at Deadline 5))), the Applicant is confident that piling operations will not hinder the Kingmere Marine Conservation Zone's conservation objectives.</p>

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	application, we advise that they begin development of a Measures of Equivalent Environmental Benefit (MEEB) proposal, in the event of the Stage 2 Assessment reaching a negative conclusion. We note this has not been included in the submission.		of a Measures of Equivalent Environmental Benefit (MEEB) proposal, in the event of the Stage 2 Assessment reaching a negative conclusion.		(Question FS 1.1) for the Applicant to submit without prejudice options for Measures of Equivalent Environmental Benefit (MEEB) for consideration in the event of the Stage 2 MCZ Assessment reaching a negative conclusion.				Notwithstanding this, the Applicant confirms that on request of the ExA, without prejudice options for Measures of Equivalent Environmental Benefit (MEEB) have been detailed in Without Prejudice Measures of Equivalent Environmental Benefit (MEEB) Review for Kingmere Marine Conservation Zone (MCZ) [REP4-078] , a Kingmere Marine Conservation Zone (MCZ) Without Prejudice Stage 2 MCZ assessment [REP4-071] has also been submitted at Deadline 4. The options presented in the Without Prejudice Measures of Equivalent Environmental Benefit (MEEB) Review for Kingmere Marine Conservation Zone (MCZ) [REP4-078] will continue to be discussed with Natural England and will inform a without prejudice implementation and monitoring plan. The Applicant has also submitted Schedule 18 - Measures of Equivalent Environmental Benefit (on a without prejudice basis) [REP4-081] which can be incorporated into the DCO if the Secretary of State concludes that the conservation objectives will be hindered.
E74	Based on the information presented to date Natural England does not have confidence that a 'noise reduction is achievable to reduce the impact ranges of TTS and behavioural effects to outside of areas of primary importance for breeding black seabream'. Therefore, advise we do not agree with the conclusion that 'there will be no impact from underwater noise on nesting black seabream within the Kingmere MCZ, and the magnitude of impact is considered to be negligible'. Additionally, we advise piling is not short-term and intermittent, particularly if it is conducted sequentially as stated in the WCS. We disagree that		No change		No change		No change		Please refer to the Applicants response to E22 above. The Applicant highlights that piling should not be considered continuous due both to the nature of the impulsive sounds produced, which are treated differently (and more strictly) than continuous noise sources, and the intermittent nature of piling operations, which requires frequent breaks of a number of hours or longer between piles for the installation vessel to relocate or recalibrate equipment. Piling is considered short term as the construction phase is temporary, and any underwater noise generated during construction will end on its completion

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E76	<p>underwater noise will not hinder the conservation objectives of the site.</p> <p>The three main sources of SSC and sediment deposition may arise from Rampion 2 are listed as: drilling for foundations, trenching for cables, and seabed preparation activities (such as seabed levelling and sandwave clearance). We seek clarification that the seasonal restriction on cable installation activities in the export cable corridor during March-July includes the trenching activities and seabed preparation activities in this area. We advise the clarity is provided on the activities include in this restriction and any activities that would not be included before we can provide our final advice on this matter.</p>		No change		No change. We advise that any commitment regarding this matter should be secured in an updated mitigation plan, which we are yet to receive to review.		We note that there has been no change to commitment 273 within the updated In Principle Sensitive Features Mitigation Plan provided at deadline 3. Therefore, until this is updated, this point still remains outstanding.		The Applicant confirms that as set out in the Commitments Register [REP4-057] (updated at Deadline 5), commitment C-273 (as secured in condition 11(1)(k) of the dMLs (Schedules 11 and 12 of the draft DCO [REP4-004] (updated at Deadline 5)), has been updated to the following: C-273" A seasonal restriction will be put in place to ensure Offshore Export Cable Corridor activities (including: construction and installation, preparatory works during cable installation, UXO clearance, preventive or scheduled maintenance, inspections and decommissioning) are undertaken outside the black seabream breeding period (1st March- 31st July inclusive) to avoid any effects from installation works on black seabream nesting within or outside of the Kingmere MCZ. This does not apply to emergency work required to maintain the operation, safety and integrity of the infrastructure."
E77	Natural England also note that in relation to short snouted seahorse there is a potential for underwater noise impacts on the following MCZ's: • Beachy Head West MCZ (TTS and behavioural) • Beachy Head East MCZ, Selsey Bill and the Hounds MCZ, Bembridge MCZ (behavioural). Natural England advises that Short-snouted seahorse are protected within these MCZs year-round. The Applicant has proposed the mitigation put forward will		No change		No change		We understand the Applicant intends on submitting further information on this issues at deadline 4, which we will review when it is received.		<p>The Applicant is confident that a suitably precautionary assessment has been undertaken to establish the potential impacts from underwater noise on seahorse in Chapter 8: Fish and shellfish Ecology, Volume 2 [APP-049] (updated at Deadline 5).</p> <p>Information on the efficacy and limitations of noise abatement systems was provided in Appendix I MM: Noise Abatement Systems in the Applicant's Responses to Examining Authority's Written Questions [REP3-050] submitted into Examination at Deadline 3. Further work has been undertaken to provide a comparison of the environmental conditions at the Proposed Development with other projects where Noise Abatement Systems (NAS) have been deployed. The outputs of this work are detailed in Information to support efficacy</p>

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	<p>ensure these impacts are not realised within the MCZs, however, the assessment does not refer to evidence/modelling that demonstrates this, and no noise contour is displayed on graphic 1. We advise Graphic 1 is updated to include this contour. In relation to the mitigation measures themselves, Natural England has the same concerns around efficacy as raised above in relation to black seabream. Additionally, we have not agreed or discussed a suitable behavioural threshold with the Applicant for short-snouted seahorses. We advise that suitable evidence is provided to support this conclusion.</p>								<p>of noise mitigation / abatement techniques with respect to site conditions at Rampion 2 Offshore Windfarm [REP4-067] and were incorporated into the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5).</p> <p>As detailed in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), the Applicant has committed to the use of Double Big Bubble Curtains (DBBC) throughout the piling campaign. 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 qualifying features of MCZs. In comparison to the previous commitment to use at least one noise abatement system throughout the piling campaign (which assumed, at minimum, 6dB reduction for all piling works), the Applicant highlights that this is a substantial additional commitment to mitigation. Commitment C-265 has been updated accordingly to reflect this proposed mitigation. The updated commitment is as follows: <i>C-265: "Double big bubble curtains will be deployed as the minimum single offshore piling 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:</i></p> <ul style="list-style-type: none"> • <i>sensitive receptors at relevant Marine Conservation Zone (MCZ) sites and reduce the risk of significant residual effects on the designated features of these sites;</i> • <i>spawning herring; and</i> • <i>marine mammals."</i> <p>The mitigated impact ranges, with the implementation of DBBC (15dB reduction), are presented relative to the MCZs of which seahorse are a qualifying feature in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5). As evident in Figures 5.14 to 5.17 of the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), with the implementation of DBBC, the</p>

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									<p>impact range contours are mitigated to further outside of the MCZs. It is worth noting that the mitigated impact ranges from the implementation of DBBC, as defined using the overly precautionary 135 dB SELss threshold (the use of which the Applicant does not support), also do not overlap with the MCZs. The Applicant is therefore confident that the Conservation Objectives of the Beachy Head West MCZ, Beachy Head East MCZ, Selsey Bill and the Hounds MCZ and Bembridge MCZ will not be hindered. The Applicant also notes that seahorses in the English Channel are exposed to a range of anthropogenic noise sources, as evidenced in site specific ambient noise surveys undertaken in 2022 and 2023 (Appendix 8.3 - Underwater noise study for sea bream disturbance [REP2-011] and Appendix 8.4: Black Seabream Underwater Noise Technical Note and Survey Results, Revision A, Volume 4 [PEPD-023]) and are therefore reasonably be expected to be accustomed to higher levels of noise and would thus have a correspondingly lower sensitivity to disturbance by noise.</p> <p>The Applicant also clarifies that the East modelling location represents the eastern array boundary, which is closest to the Beachy Head West MCZ. The portion to the north edge of this boundary is a Windfarm Separation Zone (where no WTGs can be built, defined on the Offshore Works Plan [APP-008]), see Figure 5-14 in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), and no piling will occur further north than the location used for modelling. Therefore, this represents the worst-case modelling location in respect of seahorse and the Beachy Head West MCZ.</p> <p>In a meeting held on 28 June 2024, Natural England queried the worst-case underwater noise modelling location on the western boundary, with regard to the Selsey Bill and the Hounds MCZ. The piling location on the western boundary of the Order Limits was identified as the worst-case location on account of the bathymetry of the site (the modelled location is in approximately 23.5 m of water, compared to approximately 18.5 m of water at the corner just to the north east); the difference in distances to the MCZ is marginal. Notwithstanding this, to provide reassurance to Natural</p>

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E78	<p>It is stated that the 'The implementation of embedded environmental measures to employ one or more noise abatement mitigations, during the summer breeding season of seahorse (C-265, C-274, C280, and C- 281, Table 3-1) will reduce the impact ranges of behavioural effects to outside of the MCZs.' However, no evidence has been provided here to support this statement, and therefore the subsequent conclusion of not hindering the conservation objectives of the relevant MCZ's. We also advise that we have not discussed an appropriate threshold for behavioural disturbance on seahorses with the Applicant. We advise that evidence is provided to demonstrate that the mitigation measures put forward have proven efficacy (in the same environmental conditions as are present at the Rampion 2 site) to reduce the noise levels to below an acceptable behavioural threshold level within Beachy Head West MCZ. We advise without this information we do</p>		No change		No change		We understand the Applicant intends on submitting further information on this issues at deadline 4, which we will review when it is received.		<p>England, the Applicant will share figures with Natural England following Deadline 5 and submit them into the examination at Deadline 6, this figures will show the worst case and mitigated underwater noise contours, relative to the Selsey Bill and the Hounds MCZ from the location closest to the MCZ on the western boundary of the Order Limits.</p> <p>The Applicant is confident that a suitably precautionary assessment has been undertaken to establish the potential impacts from underwater noise on seahorse.</p> <p>As detailed in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), the Applicant has committed to the use of Double Big Bubble Curtains (DBBC) throughout the piling campaign. 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 qualifying features of MCZs. In comparison to the previous commitment to use at least one noise abatement system throughout the piling campaign (which assumed, at minimum, 6dB reduction for all piling works), the Applicant highlights that this is a substantial additional commitment to mitigation. Commitment C-265 has been updated accordingly to reflect this proposed mitigation. The updated commitment is as follows: <i>C-265: "Double big bubble curtains will be deployed as the minimum single offshore piling 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:</i> <ul style="list-style-type: none"> <i>sensitive receptors at relevant Marine Conservation Zone (MCZ) sites and reduce the risk of significant residual effects on the designated features of these sites;</i> <i>spawning herring; and</i> <i>marine mammals."</i> <p>The mitigated impact ranges, with the implementation of DBBC, are presented in the In Principle Sensitive Features</p> </p>

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	not consider the magnitude to be negligible.								<p>Mitigation Plan [REP4-053] (updated at Deadline 5). The Applicant also wishes to highlight that the mitigated impact ranges from the implementation of DBBC, as defined using the overly precautionary 135 dB SELss threshold (the use of which the Applicant does not support), also do not overlap with the MCZs. The mitigated noise contours are presented in Figure 5.14 to Figure 5.17 of the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5).</p> <p>Information on the efficacy and limitations of noise abatement systems was provided in Appendix I MM: Noise Abatement Systems in the Applicant's Responses to Examining Authority's Written Questions [REP3-050] submitted into Examination at Deadline 3.</p> <p>Further work has been undertaken to provide a comparison of the environmental conditions at the Proposed Development with other projects where Noise Abatement Systems (NAS) have been deployed. The outputs of this work are detailed in Information to support efficacy of noise mitigation / abatement techniques with respect to site conditions at Rampion 2 Offshore Windfarm [REP4-067] and were incorporated into the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5).</p>
E79	As recognised in 7.5.3 Seahorses have been put into Group 4 'Fishes that have special structures mechanically linking the swim bladder to the ear', which means they are a particularly sensitive receptor to underwater noise impacts. Natural England note that there is a potential for 'TTS impacts on breeding seahorse' as 'there is an interaction of the impact ranges from piling in the array area, with Beachy Head West MCZ'. It is stated that 'embedded mitigation to reduce impacts from underwater noise on sensitive receptors will		No change		Natural England have provided advice on the additional material submitted in Appendix E3. This information has not changed our position on this point.		We understand the Applicant intends on submitting further information on this issues at deadline 4, which we will review when it is received.		<p>As detailed in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), the Applicant has committed to the use of Double Big Bubble Curtains (DBBC) throughout the piling campaign. 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 qualifying features of MCZs. In comparison to the previous commitment to use at least one noise abatement system throughout the piling campaign (which assumed, at minimum, 6dB reduction for all piling works), the Applicant highlights that this is a substantial additional commitment to mitigation.</p> <p>Commitment C-265 has been updated accordingly to reflect this proposed mitigation. The updated commitment is as follows: C-265: "Double big bubble curtains will be deployed as the minimum single offshore piling noise mitigation technology to</p>

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	<p>reduce the impact ranges of TTS to outside of the MCZ'. However, no evidence has been provided here to support this statement, and therefore the subsequent conclusion of not hindering the conservation objectives of the relevant MCZ's. We advise that evidence is provided to demonstrate that the mitigation measures put forward have proven efficacy (in the same environmental conditions as are present at the Rampion 2 site) to reduce the noise levels to below the TTS level within Beachy Head West MCZ. We advise without this information we do not consider the magnitude to be negligible.</p>								<p>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:</p> <ul style="list-style-type: none"> • sensitive receptors at relevant Marine Conservation Zone (MCZ) sites and reduce the risk of significant residual effects on the designated features of these sites; • spawning herring; and • marine mammals." <p>The mitigated TTS impact ranges, with the implementation of DBBC, are presented in figures 5.1 and 5.2 of Appendix 9- Further Information for Action Points 38 and 39 - Underwater Noise [REP4-061]. Information on the efficacy and limitations of noise abatement systems was provided in Appendix I MM: Noise Abatement Systems in the Applicant's Responses to Examining Authority's Written Questions [REP3-050] submitted into Examination at Deadline 3. Further work has been undertaken to provide a comparison of the environmental conditions at the Proposed Development with other projects where Noise Abatement Systems (NAS) have been deployed. The outputs of this work are detailed in Information to support efficacy of noise mitigation / abatement techniques with respect to site conditions at Rampion 2 Offshore Windfarm [REP4-067] and were incorporated into the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5).</p>
E80	<p>We advise that short-snouted seahorse are treated as a stationary receptor in terms of increases in SSC and sediment deposition, in the same way they have been for noise. We advise the assessment is amended to reflect this.</p>		No change		No change		No change		<p>The Applicant is confident that a suitably precautionary assessment of seahorse has been undertaken, and mitigation proposed where appropriate (as defined in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), and the Commitments Register [REP4-057] (updated at Deadline 5)). The Applicant is confident that when considering seahorse as a receptor to impacts from increased SSC and deposition, seahorse will move away from areas of disturbance. Furthermore, as detailed in Table 8-26 and paragraph 8.9.392 of Chapter 8: Fish and shellfish Ecology, Volume 2 [APP-049], sediment plumes are anticipated to be localised, and will</p>

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E82	Natural England has concerns regarding the IPSFMP not being finalised until the post-consent/pre-construction phase, and that it is stated the mitigation measures are not confirmed. We advise that where mitigation measures are essential to the assessment, we cannot agree the assessment conclusions without sufficient certainty in the measures being progressed and being able to achieve the levels of mitigation required. Natural England advise that further investigation and information is provided into the Examination to demonstrate the effectiveness of the measure.		No change		No change		No change		<p>quickly dissipate after cessation of the activities, due to settling and wider dispersion with the concentrations reducing quickly over time to background levels. Therefore, taking this into consideration, the Applicant is confident that the impact, and therefore significance of effect will be minor. These species are expected to be resilient to any increase in SSC as winter storm events in their natural environment cause temporary increases in suspended sediment concentration of a similar magnitude to that which will be produced by the construction operations.</p> <p>The Applicant confirms that the proposed measures (detailed in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5)) will be progressed but will be refined based on the Final Design information and piling parameters. This information will only be known once design refinement has been completed post consent. The Final Plan must accord with In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5) as secured in Condition 11(1)(k) of the dMLs (Schedules 11 and 12 of the draft DCO [REP4-004]).</p> <p>Information on the efficacy and limitations of noise abatement systems was provided in Appendix I MM: Noise Abatement Systems in the Applicant's Responses to Examining Authority's Written Questions [REP3-050] submitted into Examination at Deadline 3. Further work has been undertaken to provide a comparison of the environmental conditions at the Proposed Development with other projects where Noise Abatement Systems (NAS) have been deployed. The outputs of this work are detailed in Information to support efficacy of noise mitigation / abatement techniques with respect to site conditions at Rampion 2 Offshore Windfarm [REP4-067] and were incorporated into the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5).</p>
E83	Natural England notes it appears to be implied here that if the worst-case scenario is not realised some of these measures may be reduced.		No change		No change		No change		<p>The Applicant confirms that the measures presented in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5) are purely considered 'In Principle' on the basis that the optimised design for construction is not yet finalised. The Final Plan will be submitted pre-construction for</p>

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E84	<p>Therefore, we advise that we do not have sufficient certainty of exactly what we might be agreeing to at this stage. We advise that this is clarified.</p> <p>Natural England advise that post construction monitoring to verify the predicted effects will be required. Natural England would also expect that monitoring would be undertaken to demonstrate recovery, with further measures potentially being triggered if this was not shown. We advise that this clarified and included in an updated Plan.</p>		No change		No change		No change		<p>agreement with the MMO in consultation with Natural England (secured in Condition 11(1)(k) of the dMLs (Schedules 11 and 12 of the draft DCO [REP4-004] (updated at Deadline 5)) and must accord with the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5). The commitments as detailed in the Commitments Register [REP4-057] (updated at Deadline 5) and secured through the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5) will be adhered to by the Project regardless of the realisation of the worst-case scenario. These commitments include for instance, the use of DBBC throughout the piling campaign (C-265), and the commitment to a piling restriction in the western part of the array during the majority of the black seabream breeding period (March-June), and sequenced piling in the western part of the Offshore Array Area during July (C-281).</p> <p>The Applicant has submitted an updated Offshore In Principle Monitoring Plan [REP4-055] at Deadline 4, which details the proposed monitoring requirements for sensitive benthic subtidal and intertidal ecology features (including black seabream nesting habitats), and fish ecology features (black seabream). Updates to the Plan have also been made in response to feedback from Natural England as provided in Appendix L1.</p> <p>As detailed in the Offshore In Principle Monitoring Plan [REP4-055], the requirement of post-construction sensitive habitat monitoring will be dependent on the findings of the pre-construction surveys. Where chalk habitat, stony reef, peat and clay exposures and <i>S. spinulosa</i> reef are identified during the baseline survey, a single post-construction survey, specifically targeting those habitats and reefs identified in the baseline survey, will be undertaken as a check on their condition using the same methodology set out for pre-construction monitoring. If significant impacts are observed post-construction the potential requirement for further surveys will be agreed with the MMO following review of the post-construction survey data.</p> <p>As detailed in the Offshore In Principle Monitoring Plan [REP4-055], the proposed underwater noise monitoring</p>

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E86	It is stated that ' <i>Updates to the project design that could impact the conclusions of the assessment may be subject to further assessment if deemed appropriate in consultation with the relevant authority</i> '. Natural England advises that we have concerns over assessments being changed post-consent and the process that would need to be followed to achieve this. We advise that updates to the underwater noise monitoring proposed also appear to be leaving handling the uncertainty to post consent. We advise that all reasonable efforts should be		No change		No change		No change		<p>includes the construction noise monitoring of four from the first twelve (12) piles to validate the assumptions made within the 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.</p> <p>The results of the underwater noise monitoring to establish the efficacy of the mitigation measure(s) will inform the design of the piling exclusion zones to be implemented during the sensitive season for the black seabream feature of the Kingmere MCZ. The noise levels recorded will be used to fine-tune the mitigation measures applied and/or refine the exclusion zones such that the noise levels modelled and set out within the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5) will not be exceeded at the MCZ. This enables an adaptive management approach to be adopted to provide for uncertainties in the predicted noise levels reaching the designated black seabream feature and ensure the level of protection afforded through the adoption of the noise mitigation measures is delivered during the construction of the Proposed Development.</p> <p>The Applicant confirms that any changes will represent a refinement of the current project design envelope (within the assessed parameters) to ensure they are appropriate to the final design (as recognised in the Planning Inspectorate Advise Note Nine). Any changes that would exceed the design envelope would require a marine licence variation or new licence that would need to be appropriately supported by updated assessments and evidence as relevant.</p>

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E87	made to narrow down this uncertainty prior to consent being granted. We advise our benthic comments on the features to be included and comments above on the mitigation measures are considered here. Refer to our comments and amend.		No change		No change		See point F35. Our overarching concerns regarding mitigation measures relating to benthic habitats, including areas suitable for nesting bream remain.		Please refer to the Applicant's responses to F64 to ref F8 in Applicants Responses to Relevant Representations [REP1-017] (ref E61 to E78 in this Risks and Issues Log). The Applicant has responded to each of the comments on the mitigation measures individually in the responses given above.
E88	Natural England advise that we do not have confidence in the ability of the ' <i>spatial and temporal zoning plan</i> ' to deliver effective mitigation to prevent the conservation objectives of Kingmere MCZ being hindered. As Cefas have raised, such plans rely on the modelling, which is not sufficiently reliable to make predictions to such specific boundaries. In addition, there is not sufficient information on the efficacy of mitigation measures in this environment and their ability to achieve thresholds to such defined boundaries. Finally, we advise that in the absence of an agreed threshold for behavioural disturbance to reduce the impact down to within the MCZ, mitigation		No change		No change		See point E72.		Information on the efficacy and limitations of noise abatement systems was provided in Appendix I MM: Noise Abatement Systems in the Applicant's Responses to Examining Authority's Written Questions [REP3-050] submitted into Examination at Deadline 3. Further work has been undertaken to provide a comparison of the environmental conditions at the Proposed Development with other projects where Noise Abatement Systems (NAS) have been deployed. The outputs of this work are detailed in Information to support efficacy of noise mitigation / abatement techniques with respect to site conditions at Rampion 2 Offshore Windfarm [REP4-067] and were incorporated into the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5). The Applicant's position on the behavioural threshold for black seabream has been reliant upon existing literature and best available knowledge and understanding, as detailed in Paragraph 8.9.247 et seq. of Chapter 8: Fish and shellfish Ecology, Volume 2 [APP-049] (updated at Deadline 5). As detailed in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), the Applicant considers the disturbance threshold of 141 dB SELss as

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	<p>cannot be agreed. Unless additional information is provided, it will remain our position that a piling exclusion from March-July inclusive is the only measure we can have confidence will not hinder the conservation objectives of Kingmere MCZ. We advise that this information should be submitted into the Examination on this point.</p>								<p>suitably precautionary, as it is based on a short-lived startle response observed in sea bass. As informed by Popper <i>et al.</i>, (2014) behavioural disturbances are considered to be long term changes in behaviour and distribution, and should not include effects on single animals, or small changes in behaviour such as startle responses or minor movements. The use of the disturbance threshold of 141 dB SELss is therefore considered to be suitably precautionary.</p> <p>Further to this, the approach used by the Applicant to define a suitable threshold for disturbance from underwater noise aligns with that used in other OWF applications and assessments (e.g. Hornsea Four Offshore Wind Farm Application (Ørsted, 2021) Hornsea Project Three Offshore Wind Farm Application (Ørsted, 2018), Sheringham and Dudgeon Extension Offshore Wind Farm Projects Application (Equinor, 2022) Awel y Môr Offshore Wind Farm Application (RWE, 2023)), and therefore complies with current practice when approaching issues such as scientific data gaps and uncertainties, in order for planning decisions to be made.</p> <p>The Applicant maintains their position that a full piling restriction from 1 March to 31 July (as recommended by Natural England) is disproportionate to the risk of an impact arising that could result in significant population level effects on nesting black bream. The Applicant reiterates that a full piling exclusion from March-July inclusive would also have significant issues for the practical development of the Proposed Development. The Applicant has proposed various mitigation measures during the black bream nesting season from March through to July. These measures include the use of noise abatement systems, a sequencing approach to piling starting in locations furthest from the MCZ, and the definition of piling exclusion zones (as detailed in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), the delivery of which secured in Condition 11(1)(k) of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order (DCO) [REP4-004] (updated at Deadline 5)). Furthermore, the Applicant confirms, as detailed in the Offshore In Principle Monitoring Plan [REP4-055], construction noise monitoring will be undertaken of four from the first twelve (12) piles to validate the assumptions made within the ES, and to monitor construction noise during the</p>

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E91	We advise that clarity is provided here that this is relevant to Temporary Threshold Shift and behavioural disturbance. We advise clarity is provided.		No change		No change		We note that an updated In Principle Sensitive Feature Mitigation Plan has been submitted at deadline 3. Whilst 5.5.3 does now note that these measures are relevant to Temporary Threshold Shift and behavioural disturbance, we advise that based on the modelling that we commented		<p>black seabream breeding season (1st March to 31 July) if foundation installation using percussive hammers is undertaken during these months.</p> <p>The results of the underwater noise monitoring to establish the efficacy of the mitigation measure(s) will inform the design of the piling exclusion zones to be implemented during the sensitive season for the black seabream feature of the Kingmere MCZ. The noise levels recorded will be used to fine-tune the mitigation measures applied and/or refine the exclusion zones such that the noise levels modelled and set out within the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5) will not be exceeded at the MCZ. Through the application of a variety of mitigation measures, monitoring and adaptive management during the breeding season, the Applicant is confident that piling operations will not hinder the Kingmere MCZ conservation objectives.</p> <p>The Applicant confirms that this statement relates to both Temporary Threshold Shift and behavioural disturbance. To address Natural England's concerns about the potential for recoverable injury impacts, the Applicant presented the unmitigated and mitigated recoverable injury noise contours, at the closest modelling location relative to the Kingmere MCZ in Appendix 9 - Further Information for Action Points 38, 39 [REP1-020]. As evident in this submission, whilst there is a minor interaction of the unmitigated 203dB recoverable injury contour with the Kingmere MCZ, with the implementation of at least one noise abatement measure, there is no interaction of the recoverable injury impact contours with the MCZ. As detailed in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), the Applicant has also since committed to the use of Double Big Bubble Curtains (DBBC) throughout the piling campaign. The implementation of this mitigation will further reduce the impact ranges of underwater noise (including behavioural effect ranges) to sensitive features within the vicinity of the Proposed Development in comparison to the previous commitment to use at least one noise abatement system throughout the piling campaign (which assumed, at minimum, 6dB reduction for all piling works). A revised Appendix 9 - Further Information for Action Points 38, 39 - Underwater Noise [REP4-061]</p>

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E94	We advise that the information shared confidentiality with Natural England is not sufficient to address our concerns. In relation to double big bubble curtains, we advise that other factors such as the strength of the current, depth of water and benthic substrate are critical to performance. These have not been compared. We advise that full comparison of environmental conditions is undertaken, to aid in providing further confidence in the levels of abatement proposed.		No change		No change		on in our deadline 3 Appendix E3 there remains uncertainty over whether noise levels that could elicit recoverable injury could be experienced within Kingmere MCZ and therefore whether these measures may also be relevant to that affect as well.		<p>was subsequently submitted at Deadline 4, showing the mitigated recoverable injury noise contours with the implementation of DBBC (15dB reduction). As evident, with the implementation of DBBC, there is no interaction of the recoverable injury impact contours with the Kingmere MCZ.</p> <p>With regards to the potential for impacts from temporary threshold shift (TTS) and behavioural effects, as detailed in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), the Applicant has committed to the implementation of various mitigation measures, inclusive of a piling restriction from March through to June in the western area of the array, the implementation of a piling sequencing plan in July, and the use of at least one offshore piling noise mitigation technology (DBBC) throughout the piling campaign. The implementation of these mitigation measures will ensure that the conservation objectives of the Kingmere MCZ are not hindered.</p> <p>Information on the efficacy and limitations of noise abatement systems was provided in Appendix I MM: Noise Abatement Systems in the Applicant's Responses to Examining Authority's Written Questions [REP3-050] submitted into Examination at Deadline 3. Further work has been undertaken to provide a comparison of the environmental conditions at the Proposed Development with other projects where Noise Abatement Systems (NAS) have been deployed. The outputs of this work are detailed in Information to support efficacy of noise mitigation / abatement techniques with respect to site conditions at Rampion 2 Offshore Windfarm [REP4-067] and were incorporated into the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5).</p>
							See point E72.		

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E95	Please refer to our comments above in relation to the studies referenced here, and how they have been applied. We have concerns over the methodology used to determine a threshold from the ambient noise data collected. It is clear that the peak levels of noise have been referenced, but these are not the same as continuous noise from piling, and therefore it may be more appropriate to look toward the minimum levels of noise. However, we defer to Cefas on this matter. We advise that you refer to the more detailed advice of Cefas with regards to how the Applicant has proposed deriving a threshold ambient noise data.		No change		No change		No change		<p>Appendix 8.4: Black Seabream Underwater Noise Technical Note and Survey Results, Volume 4 of the Environmental Statement (ES) [PEPD-023], issued in January 2024, contains the results of the extended underwater noise baseline monitoring campaign from March to July 2023. The updated version of Appendix 8.3 – Underwater noise study for sea bream disturbance, Volume 4 of the ES [REP2-011], which contains the results from the 2022 monitoring survey, is also available in the Examination Library. The In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), also provides a summary of surveys.</p> <p>The Applicant highlights, that, as noted in E74, piling should not be considered 'continuous' due to the impulsiveness of the piling noise. It is entirely correct and reasonable to compare the peak sound levels occurring in the background noise, with the peak sound levels with piling.</p>
E96	Natural England advise that no detailed discussion regarding this mitigation being suitable for seahorses has been had as part of the evidence plan process. We advise that the maximum noise attenuation measures should be used year-round in all areas. We advise evidence is provided that this will sufficiently reduce the impacts within seahorse MCZ's. No evidence has been provided to support 141dB re 1 µPa2s (SELss) being a suitable behavioural threshold for seahorses. We advise that seahorses are a 'group 4' receptor. Group 4 receptors are defined as having		No change		No change		We understand the Applicant intends on submitting further information on this issue at deadline 4, which we will review when it is received.		<p>As detailed in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), the Applicant has committed to the use of DBBC throughout the piling campaign. 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 qualifying features of MCZs. In comparison to the previous commitment to use at least one noise abatement system throughout the piling campaign (which assumed, at minimum, 6dB reduction for all piling works), the Applicant highlights that this is a substantial additional commitment to mitigation. Commitment C-265 has been updated accordingly to reflect this proposed mitigation. The updated commitment is as follows:</p> <p>C-265: <i>“Double big bubble curtains will be deployed as the minimum single offshore piling noise mitigation technology to deliver underwater noise attenuation for all foundation installations throughout the construction of the Proposed</i></p>

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	the highest sensitivity to noise and therefore we would expect to see evidence that this threshold was suitable for seahorses. We note that 8.9.259 of the Fish and Shellfish Chapter suggests lower thresholds. We advise that this advice is taken into consideration, the plan amended, and evidence provided.								<p><i>Development where percussive hammers are used in order to reduce predicted impacts to:</i></p> <ul style="list-style-type: none"> <i>sensitive receptors at relevant Marine Conservation Zone (MCZ) sites and reduce the risk of significant residual effects on the designated features of these sites;</i> <i>spawning herring; and</i> <i>marine mammals."</i> <p>The mitigated impact ranges, with the implementation of DBBC, are presented in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5). The Applicant wishes to highlight that the mitigated impact ranges from the implementation of DBBC, as defined using the overly precautionary 135 dB SELss threshold (the use of which the Applicant does not support), also do not overlap with the MCZs of which seahorses are a feature. Furthermore, taking into consideration the reduced impact ranges from the implementation of DBBC throughout the piling campaign, and the low numbers of seahorse in deeper waters during their overwintering phase, the risk of seahorses outside of the MCZs, encountering noise levels that could result in injurious effects is very low. The Applicant also notes that seahorses in the English Channel are exposed to a range of anthropogenic noise sources, as evidenced in site specific ambient noise surveys undertaken in 2022 and 2023 (Appendix 8.3 - Underwater noise study for sea bream disturbance [REP2-012] and Appendix 8.4: Black Seabream Underwater Noise Technical Note and Survey Results, Revision A, Volume 4 [PEPD-023]) and are therefore reasonably expected to be accustomed to higher levels of noise and would thus have a correspondingly lower sensitivity to disturbance by noise.</p>
E97	Natural England question whether this accounts for simultaneous piling at different locations, and the cumulative potential this has. We advise clarity is provided within the assessment.		No change		No change		No change		<p>The Applicant confirms that the behavioural threshold used to inform the zoning exercise and mitigation (141dB re 1 µPa²s (SELss)) is for single strike, and represents disturbance, which by nature does not require or considered timed exposures. Multiple location piling scenarios (such as simultaneous piling) are therefore not applicable for this criterion</p>

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E98	Notwithstanding our advice above on the uncertainty of what can be achieved with noise abatement, Natural England note that the footnote here states ' <i>It should be noted that detailed octave or 1/3rd octave band attenuations for the PULSE (IQIP) and MNRU (MENCK) hammers were not supplied despite direct requests, and therefore these predictions are made with limited data and should be considered indicative for the equipment and conditions at Rampion 2.</i> ' We advise this further reduces the confidence that these measures will achieve the values of abatement stated. We advise that further effort to obtain this information is made.		No change		No change		We understand the Applicant intends on submitting further information on this issues at deadline 4, which we will review when it is received.		<p>The Applicant reiterates the precautionary nature of the parameters built into the underwater noise modelling (Appendix 11.3: Underwater Noise Assessment Technical Report, Volume 4 [APP-149] (updated at Deadline 5)), and the modelling of noise abatement measures (modelling of minimal underwater noise attenuations afforded by each noise abatement measure). Furthermore, the modelling of noise abatement measures also only reflects the minimum level of noise abatement from the data available to ensure a precautionary approach.</p> <p>The Applicant confirms that direct requests have been made for this information to the manufacturers, and to date these have not been made available to the Applicant. It is acknowledged that this is new technology from the leading impact hammer manufacturers and so there will be limited data available, which is why the minimum indicative values have been utilised. It should also be noted that these hammers are not the primary measure of noise abatement, which has been upgraded to a much higher performance DBBC, and any low noise hammer (if used as a second noise abatement measure) will offer additional noise reduction to this primary measure.</p>
E99	Natural England support a piling exclusion in the western array (given we support this for the whole of the array March to July). We advise that the conservation advice notes the sensitive period is March to July inclusive (not March to June). There is evidence of active nests in July from the aggregates data, which informed the conservation advice for the site. We advise that July is included in any seasonal restriction. Natural England advises that insufficient evidence is available in relation to the efficacy of the mitigation		No change		No change		Our position has not changed on this point. See also See point E72.		<p>Following a detailed assessment undertaken on a precautionary basis, as detailed in Chapter 8: Fish and Shellfish Ecology, Volume 2 [APP-049] (updated at Deadline 5), the Applicant is confident that a full piling restriction from 1 March to 31 July is not appropriate or required to avoid significant population level effects on nesting black bream.</p> <p>The Applicant maintains their position that the proposed mitigation measures as detailed in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5) will ensure no hindrance to the conservation objectives of the Kingmere MCZ. The Applicant maintains their position that a full piling restriction from 1 March to 31 July (as recommended by Natural England) is disproportionate to the risk of an impact arising that could result in significant population level effects on nesting black bream. The Applicant reiterates that a full piling exclusion from March-July inclusive would also have significant issues for the practical development of the</p>

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E100	<p>measures and a suitable threshold to mitigate to in order to allow piling to proceed in the eastern array during March-July. We advise that currently there is insufficient evidence that a full seasonal restriction is not required in the eastern array.</p> <p>We note the buffers on Figure 5.15 appear to relate to distances from the MCZ. It is not</p>		No change		No change		No change		<p>Proposed Development. The Applicant directs the Examining Authority to ref FS2.7 in Table 2-1, where this is detailed further. The Applicant has proposed various mitigation measures during the black bream nesting season from March through to July. These measures include the use of noise abatement systems (DBBC and another noise abatement measure), a sequencing approach to piling starting in locations furthest from the MCZ, and the definition of piling exclusion zones (as detailed in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), the delivery of which secured in Condition 11(1)(k) of the dMLs (Schedules 11 and 12 of the draft DCO [REP4-004] (updated at Deadline 5)). Through the application of a variety of mitigation measures during the nesting season, the Applicant is confident that piling operations will not hinder the Kingmere MCZ conservation objectives.</p> <p>Information on the efficacy and limitations of noise abatement systems was provided in Appendix I MM: Noise Abatement Systems in the Applicant's Responses to Examining Authority's Written Questions [REP3-050] submitted into Examination at Deadline 3. Further work has been undertaken to provide a comparison of the environmental conditions at the Proposed Development with other projects where Noise Abatement Systems (NAS) have been deployed. The outputs of this work are detailed in Information to support efficacy of noise mitigation / abatement techniques with respect to site conditions at Rampion 2 Offshore Windfarm [REP4-067] and were incorporated into the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5). Taking the above into consideration, the Applicant is confident that the implementation of a zoned approach to a piling ban is appropriate and proportionate the level of mitigation required to ensure no hindrance to the conservation objectives of the Kingmere MCZ.</p> <p>As described in paragraph 5.3.39 of the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), the purpose of these bands is to define sections</p>

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	<p>clear what sounds levels are expected within the MCZ at each of these distances. We note turbine locations have yet to be decided, therefore currently it is possible that even starting from the furthest piling location could result in piling significantly closer than band A in the eastern array or be significantly further east than the far western portion of the western array (band C).We advise that further information is provided. We advise that there are clear uncertainties in relation to where the furthest pile will be located and therefore the effectiveness of this element of the measure. Refer to comments above regarding the noise modelling specifically.</p>								<p>of permitted areas of piling that move progressively closer to the Kingmere MCZ, with the purpose of keeping piling as far from the Kingmere MCZ for as long as possible, irrespective of the final wind turbine generators layout. These bands, as illustrated in Figure 5.13 of the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), are provided as an example of how the zoning principle would be applied. The final zoning plan will be set out clearly in the Final Sensitive Features Mitigation Plan, which will be submitted to MMO in consultation with Natural England for approval pre-construction, once the final design information is available and captured in the Final Plan (as secured in condition 11(1)(k) of the dMLs (Schedules 11 and 12 of the draft DCO [REP4-004] (updated at Deadline 5)).</p>

Appendix D

Natural England Risk and Issues Log tab

F: Benthic and ecology

Point	Taken from Natural England's Relevant and Written Representations Rampion 2 Appendix F - Benthic, Subtidal and Intertidal Ecology [RR-265]	RAG Status Rel and WR Rep D1	Consultation, actions, progression	RAG Status at D2	Consultation, actions, progression	RAG Status at D3	Consultation, actions, progression	RAG Status at D4	Applicant's Response
F1	Natural England advises that a clear presentation and discussion of lessons learnt and monitoring from Rampion 1 is crucial to inform the basis of the current application. A better understanding of key limitations and constraints encountered for that project and how they, along with impacts to key species and habitats, were minimised where avoidance is not possible is critical to help support proposed design parameters, mitigation measures and conclusions drawn for this project.		No change		No change		No change		As detailed within the Applicant's Responses to Relevant Representations [REP1-017] , regarding Rampion 1 post-construction monitoring data specifically, it is the Applicant's understanding that the reports for the first two years of monitoring have been submitted to the respective discharging authorities in August 2023 and comments have recently been returned to Rampion 1. As such, the reports have not yet been signed off by the discharging authorities and are therefore subject to change. The evidence within such reports is still confidential and not yet in the public domain and as such, should not form the basis for this representation. The evidence from the Rampion 1 post-construction reports is not yet available for the Proposed Development to include in the Environmental Statement, due to the reasons mentioned above. When the information is publicly available, it will be taken into account in the relevant management plans.
F3	Natural England notes that, because of the delays to the programme, the site-specific survey data is already approximately 3 years old in certain areas. The limitations of the reliability of basing an ES Assessment on data that is outdated, particularly in relation to ephemeral species, such as <i>Sabellaria spinulosa</i> , should be recognised. The		No change		No change		No change		As detailed within the Applicant's Responses to Relevant Representations [REP1-017] , full details of the data underpinning the baseline characterisation for benthic ecology receptors are set out within Chapter 9: Benthic, subtidal and intertidal ecology, Volume 2 of the Environmental Statement (ES) [REP4-018] (updated at Deadline 5), which includes specific reference to the date of the site-specific surveys, along with the wide range of other datasets drawn upon to set out a robust characterisation of the receiving environment, appropriate for the purposes of EIA. Whilst the Applicant notes the comments on the age of the site-specific data, this is only relevant for certain ephemeral features, such as certain forms of <i>Sabellaria</i> habitat, for

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	assessment should therefore assume that the habitats listed (comments 21, 67, and Summary J) are present and are unavoidable as a worst- case scenario and it will not be possible to avoid them. The Applicant should note that we expect micrositng to be conducted using up to date pre-construction data to avoid impacts where possible. NB: we advise that any data used to infer presence or absence of Sabellaria spinulosa is only valid for work within 2 years of the collection of the data. We advise that age of the data is acknowledged in the assessment and that the importance of the pre-construction surveys is noted.								which detailed pre-construction surveys will be conducted, as set out in the Offshore In Principle Monitoring Plan [REP4-055] (updated at Deadline 5), the delivery of which is secured in Condition 11(1)(j) and Condition 16 (2)(b) of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5)). This will ensure provision of an appropriately contemporary dataset (i.e. less than 2 years old) with which to inform any required micrositng to avoid such features, should these be found to comprise 'reef' rather than ephemeral crust habitats. Condition 11(1)(a)(v) of the deemed Marine Licences (dMLs) (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5)) requires the design plan to take account of the outcomes of these surveys in micrositng the development.
F4	Natural England understands that the DDV survey occurred between December 2020 to February 2021. As per our advice to the Applicant (02/11/2020), this was not the optimum time for such surveys, and there was a risk the imagery would		No change		No change		No change		As detailed within the Applicant's Responses to Relevant Representations [REP1-017] , the Applicant confirms that image resolution acquired from the site specific surveys were of high quality as identified within both Appendix 9.3: Rampion 2 Offshore wind farm subtidal benthic characterisation survey report, Volume 4 of the Environmental Statement (ES) [APP-137] and Chapter 9: Benthic, subtidal and intertidal ecology, Volume 2 of the ES [REP4-018] (updated at Deadline 5). The Applicant highlights

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	<p>be poor quality and not fit for purpose. We note that Appendix 9.3 states that <i>'The main assessment was conducted using the still images captured during the DDV transects and stations due to high turbidity levels, which reduces the resolution of analysis from the video imagery'</i>. Sections 9.5.10-9.5.12 of the chapter allude to data limitations but does not explicitly acknowledge that some of these limitations stem from the lack of transect data. We advise this needs to be acknowledged in the main chapter. As turbidity affected the video quality, we question the quality of the stills for identifying habitats protected under Section 41 of the Natural Environment and Rural Communities Act (2006), as well as stoney reef features and potential black seabream nests. We note a further limitation with Ground Truthing surveys was that only 39 successful grabs were collected. Natural England queries if any</p>								<p>that the characterisation of the receiving environment has been based on a wide range of datasets, including site-specific survey, and does not solely rely upon the DDV imagery. The Applicant considers the baseline described to be a robust characterisation of the receiving environment, appropriate for the purposes of EIA; no further data have been collected to map ecological features within the proposed DCO Order Limits since these surveys were completed.</p> <p>The Applicant would highlight that it has committed to undertaking detailed pre-construction surveys as referenced in the Offshore In Principle Monitoring Plan [REP4-055] (updated at Deadline 5), the provision of which is secured in Condition 11(1)(j) and Condition 16 of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5)). Proposals for micro-siting around priority habitats, which importantly will be based on the results of the pre-construction surveys, are presented within the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5) secured in Condition 11(1)(k) of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5) and will inform the detailed design plan required to be submitted and approved pursuant to condition 11(1)(a) of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5)).</p> <p>In response to the point raised by Natural England recommending that a "benthic survey plan is agreed with the MMO" the Applicant would highlight that the survey plan is required to be submitted and approved by the MMO as secured in Condition 11(1)(j) of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5)). The Applicant</p>

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	<p>further data has been collected by Applicant over the last two years to fill this known data gap and provide a more robust baseline for assessment. We advise this ES chapter should fully acknowledge the limitations of the site-specific data collected in providing a robust baseline. And advise the Applicant to update the ES where possible with additional site-specific evidence. We advise that, based on the limitations of the characterisation data, collecting sufficient quality pre-construction data at a time of year where the turbidity is less likely to be high, will be key to informing the final mitigation strategy and to ensure the data collected is sufficient to inform micro-siting. We advise that it should be a condition of the DCO/DML that a benthic survey plan is agreed with the MMO, in consultation with Natural England well in advance of any surveys taking place, to ensure surveys can go ahead at the optimum time of year.</p>								<p>also notes that, in accordance with Condition 12(2) of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5), "The monitoring plan required under condition 11(1)(j) must be submitted in accordance with the following, unless otherwise agreed in writing with the MMO— (a) at least six months prior to the first survey, detail of any pre-construction surveys and an outline of all proposed monitoring".</p>

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F5	<p>This section states, in relation to the Predictive Habitat Mapping, <i>'Where site-specific data have been collected, this has been prioritised within the predictive habitat model and supersedes the historical data in the habitat mapit has been retained to understand the occurrence of potential biotopes where ground-truth data weren't collected to support the Application and the assessment of effects on the subtidal benthic ecology'</i>. If data gaps have been identified, we advise that further information is provided regarding the risks to the reliability of the assessment due to such data gaps, and question why further data was not gathered to ensure a robust baseline. We advise that unless the Applicant can provide more site-specific data to update the ES a more precautionary approach is required due to the uncertainties with the current characterisation</p>		No change		No change		No change		<p>As detailed within the Applicant's Responses to Relevant Representations [REP1-017], the Applicant notes that the predictive habitat model uses the best available data. The initial purpose of creating the predictive habitat model was to address data gaps identified during consultation following the Preliminary Environmental Information Report (PEIR), due to planned survey work being delayed and site-specific data therefore being unavailable at that time. The baseline characterisation, including the benthic habitat map presented within the ES documents, has been developed drawing upon a range of datasets including site-specific benthic survey, historic data and site-specific geophysical surveys. The assessment does not rely upon a habitat model based solely on historic data; the site-specific survey information has been used to augment the habitat model to provide a robust baseline appropriate for the purposes of EIA rather than substituting for a lack of site-specific data. The site-specific data have since been added to the model and it is this updated version, which supersedes the previous habitat map, that is presented in Chapter 9: Benthic, subtidal and intertidal ecology, Volume 2 of the Environmental Statement [REP4-018] (updated at Deadline 5).</p> <p>The Applicant notes that the site-specific benthic and geophysical survey data, to be of sufficient spatial resolution to allow confidence in the benthic characterisation for the purposes of EIA and follows the standard approach for baseline characterisation of offshore wind farm sites.</p> <p>The Applicant would also highlight that it has committed to undertaking detailed pre-construction surveys as referenced in the Offshore In Principle Monitoring Plan [REP4-055] (updated at Deadline</p>

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F6	<p>survey. This would include, but is not limited to, adoption of a suite of mitigation measures which would suitably avoid, reduce, mitigate impacts to any/all of the priority habitats.</p> <p>Section 9.6.13 suggests 15 biotopes were found in the site-specific survey, but table 9.11 lists 17 biotopes. We note that 5 of these biotopes are not</p>		No change		No change		No change		<p>5), the provision of which is secured in Condition 11(1)(j) and Condition 16 of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5)).</p> <p>Proposals for micro-siting around priority habitats, which, importantly, will be based on the results of the pre-construction surveys, as required to be shown in the design plan pursuant to Condition 11(1)(a)(v), are presented within the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5) secured in Condition 11(1)(k) of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5) .</p> <p>Furthermore, the Applicant can confirm that for the purpose of Environmental Impact Assessment (EIA) the habitats that were recorded during the site specific surveys are the main focus of the assessment. The assessment also draws upon some of the historic data that was presented within the predictive habitat model to build a broader picture of habitats; thus the assessment is more precautionary in nature as it assesses a wider range of potential habitats than if relying on survey data alone, as ground-truthing cannot provide 100% coverage.</p> <p>The Applicant reiterates that the coverage of site-specific benthic and geophysical survey data, to be of sufficient spatial resolution to allow confidence in the benthic characterisation for the purposes of EIA.</p> <p>As detailed within the Applicant's Responses to Relevant Representations [REP1-017], the Applicant can confirm that the modelling of biotopes and the assessment of biotopes included data from historic sources and not solely the site-specific data for the Proposed Development, as highlighted within Section 5.6.1, Appendix 9.3:</p>

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	included in the Key of Figure 9.4, which shows the spatial distribution of the biotopes (A4.131, A4.134, A4.214, A4.221, A5.611). We request clarification on which is these scenarios is correct, and that all documents are updated to reflect this. We advise that the Applicant provides an updated ES, with the correct figures throughout.								Rampion 2 Offshore wind farm subtidal benthic characterisation survey report, Volume 4 of the Environmental Statement (ES) [APP-137] . The site-specific data were prioritised within the final model with explanation of methods described within Appendix 9.3: Rampion 2 Offshore wind farm subtidal benthic characterisation survey report, Volume 4 of the ES [APP-137] . The addition of the site-specific survey data resulted in some changes to the final output maps from what was modelled in the pre-survey predictive maps at Preliminary Environmental Information Report (PEIR). Several new biotopes were introduced in the final models over-riding the historic data and notable increases in correctly classified pixels were observed throughout all maps, resulting in 12 biotopes being displayed in the final Figure 9.4. The 17 biotopes presented in Table 9.11 (taken from historic datasets and the site-specific data were taken through to the assessment of impact as a worst-case scenario of biotopes present within the footprint of the development, as set out within Chapter 9: Benthic, subtidal and intertidal ecology, Volume 2 of the ES [REP4-018] (updated at Deadline 5). The reference to 15 biotopes in section 9.6.13 is an error and should read 17.
F7	Natural England's best practice advice is to collect comprehensive/robust site-specific project data. However, Natural England notes that, outside of the site-specific project data, the Applicant has undertaken predictive modelling which relies heavily on data from		No change		No change		No change		As detailed within the Applicant's Responses to Relevant Representations [REP1-017] , the Applicant reiterates that the initial purpose of creating the predictive habitat model was to address data gaps identified following consultation during the Preliminary Environmental Information Report (PEIR), due to planned survey work being delayed and site-specific data therefore being unavailable at that time. The baseline characterisation, including the benthic habitat map presented within the ES documents, has been developed drawing upon a range of datasets including site-specific benthic survey, historic data

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	<p>literature and other surveys, which are dated and not specifically collected for this purpose. We understand these data have been used to substitute for the lack of site-specific data. But in using non site-specific project data the confidence in the modelling methodology can only be low. Therefore, Natural England does not support this approach. We advise that the conclusions drawn from the modelling are disregarded and instead greater emphasis is placed on avoiding, reducing and mitigating any potential impact pathway as much as possible. We also advise that a requirement is placed on the Applicant to undertake comprehensive pre-construction surveys which encompass sufficient data collection to inform micro-siting and provide a robust baseline, that includes a rigorous power analysis. As well as informing the baseline, the addition of</p>								<p>and site-specific geophysical surveys. The assessment does not rely upon a habitat model based solely on historic data; the site-specific survey information has been used to augment the habitat model to provide a robust baseline appropriate for the purposes of EIA rather than substituting for a lack of site-specific data.</p> <p>The Applicant would also highlight that it has committed to undertaking detailed pre-construction surveys as referenced in the Offshore In Principle Monitoring Plan [REP4-055] (updated at Deadline 5), the provision of which is secured in Condition 11(1)(j) and Condition 16 of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004]) (updated at Deadline 5). Proposals for micro-siting around priority habitats, based on the results of the pre-construction surveys, are presented within the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5) secured in Condition 11(1)(k) and as required to be shown in the design plan pursuant to Condition 11(1)(a)(v) of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004]) (updated at Deadline 5).</p> <p>In accordance with Condition 12(2) of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004]) (updated at Deadline 5), <i>"The monitoring plan required under condition 11(1)(j) must be submitted in accordance with the following, unless otherwise agreed in writing with the MMO— (a) at least six months prior to the first survey, detail of any pre-construction surveys and an outline of all proposed monitoring"</i>.</p>

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F8	<p>these data would help to provide greater confidence in the ES predictions.</p> <p>We advise that maximum likelihood estimates can be heavily biased for small samples. The optimality properties may not apply for small samples; therefore, the maximum likelihood can be sensitive to the choice of starting values. Depending on the setting of the bathymetry survey and the subsequent data collected, the underlying data being fed into the predictive model via the Maximum Likelihood Classification (MLC) methodology may not be as acute to have a level of sensitivity to pick up smaller/ low rugosity features. We advise that, as the MLC is trained via truthing and assumes that neighbouring cells correspond to higher likelihood of similarity, it is easy to underrepresent smaller or less distinguishable habitats (such as Sabellaria spinulosa).</p>		No change		No change		No change		<p>As detailed within the Applicant's Responses to Relevant Representations [REP1-017], the Applicant can confirm that for the purpose of Environmental Impact Assessment (EIA) the habitats that were recorded during the site-specific surveys are the main focus of the assessment. The assessment also draws upon some of the historic data that was presented within the predictive habitat model to build a broader picture of habitats; thus the assessment is more precautionary in nature as it assesses a wider range of potential habitats than if relying on survey data alone, as ground-truthing where ground-truthing cannot provide 100% coverage. The Maximum Likelihood Classification (MLC) is a widely applied pixel based predictive mapping approach (Brown et al. 2005, Ierodiaconou et al. 2011, Calvert et al. 2014, Boswarva et al. 2018) that calculates the probability a given pixel belongs to a specific class, thereby producing a grid of classes in the form of a raster thematic map (Ierodiaconou et al. 2011, Micallef et al. 2012). MLC was conducted here by combining the variables selected within the multi-band PCA rasters with signature files containing EUNIS classification data. Appendix 9.3 Rampion 2 Offshore wind farm subtidal benthic characterisation survey report, Volume 4 of the Environmental Statement [APP-137], provides more details on the methodologies.</p> <p>The Applicant reiterates that the coverage of site-specific benthic and geophysical survey data, to be of sufficient spatial resolution to allow confidence in the benthic characterisation for the purposes of EIA.</p>

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	<p>This under-representation is more likely to occur when the scale of the cells used are larger, as an overall assumption is derived for the most prevalent sediment or habitats found within that cell. Therefore, the MLC model may lack appropriate sensitivity. We advise that the conclusions drawn from the modelling are disregarded and instead greater emphasis is placed on avoiding, reducing and mitigating any potential impact pathway as much as possible. We also advise that a requirement is placed on the Applicant to undertake comprehensive pre-construction surveys which encompass sufficient data collection to inform micro-siting and provide a robust baseline, that includes a rigorous power analysis. As well as informing the baseline, the addition of these data would help to provide greater confidence in the ES predictions.</p>								<p>The Applicant would also highlight that it has committed to undertaking detailed pre-construction surveys as referenced in the Offshore In Principle Monitoring Plan [REP4-055] (updated at Deadline 5), the provision of which is secured in Condition 11(1)(j) and Condition 16 of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5)). Proposals for micro-siting around priority habitats, which, importantly, will be based on the results of the pre-construction surveys, (as required to be shown in the design plan pursuant to Condition 11(1)(a)(v) of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5)) are presented within the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5) secured in Condition 11(1)(k) of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5) .</p>

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F9	We note that the matrix now does not include the 'very high' category, in line with the MarLIN information that has been used to inform the assessment. However, it appears that a single consistent matrix has not been used across chapters. Whilst Natural England has raised issue across all projects with the use of matrices and potential for underestimating impacts; we advise that if the matrix approach remains acceptable to the regulator then a consistent matrix should be used by the Applicant across chapters.		No change		No change		No change		<p>As detailed within the Applicant's Responses to Relevant Representations [REP1-017], the Applicant can confirm that the sensitivity matrix was updated since PEIR to ensure that the assessment was consistent with the MarLIN MarESA sensitivity categories. The magnitude/sensitivity categories and definitions, and the resulting matrix of significance of effect used in relation to Chapter 9: Benthic, subtidal and intertidal ecology, Volume 2 of the Environmental Statement (ES) [REP4-018] (updated at Deadline 5) is consistent with the majority of other contemporary and historical assessments for other offshore wind farms for the assessment of effects significance for benthic receptors.</p> <p>The use of matrices for the assessment of significance, adopting a source-pathway-receptor model follows that adopted for other projects, considering aspects such as the magnitude of effect, sensitivity of receptor, probability of effect-receptor interaction etc. The matrices will not, however, be wholly consistent across all topics, since the assessments for each aspect (topic) follow guidance and best-practice according to the topic being considered. The specific approach in each case is set out within each specific chapter of the ES.</p>
F10	We note that the Applicant's definitions, relating to the magnitude impact, suggests that 'Major/Moderate' includes permanent/irreversible change, whereas Minor is temporary change over a minority of the		No change		No change		No change		<p>As detailed within the Applicant's Responses to Relevant Representations [REP1-017], the matrix presented in Table 9-8, Chapter 9: Benthic, subtidal and intertidal ecology, Volume 2 of the Environmental Statement (ES) [REP4-018] (updated at Deadline 5) not only delineates the temporal nature of the impact but is also clear in stating other aspects, for example in the 'Minor' category it also states 'and/or limited but discernible alteration to key characteristics or features of the particular receptors character or</p>

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	<p>receptor, and Negligible means the receptor is not sensitive. There appears to be quite a leap between Moderate as a permanent change over the majority of the receptor, to Minor which is a temporary change over a minority of the receptor, with a wide range of magnitudes fitting between the two. Throughout the assessment, there are numerous incidences where the magnitude assigned does not match the definitions in this table, and a lower magnitude has been used against this guidance. Whilst Natural England has raised issue across all projects with the use of matrices and potential for underestimating impacts; we advise that if the matrix approach remains acceptable to the regulator then magnitudes used throughout the assessment are amended to reflect the definitions in this table. It is particularly key that permanent/irreversible changes are defined as Major or Moderate.</p>								<p>distinctiveness'. For example, whilst permanent habitat loss from cable protection is regarded as long-term/permanent in relation to the availability of broadscale habitats, the impact magnitude is regarded as low and therefore should not be classified as a major/moderate impact on account of the limited alteration. Sensitive features have additional mitigation applied to reduce the magnitude of the impact. On this basis, the Applicant considers the assessment to be robust and accurate and it does not require and update to the magnitudes presented within the ES.</p>

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F11	<p>Natural England has concerns over the long-term degradation of geotextile bags as cable protection and/or stabilisation for installation barges due to concerns over their removability and potential release of plastics, as well as the introduction of plastic to the marine environment generally.</p> <p>In relation to decommissioning scour protection, surface laid cables, external cable protection, and crossing protection, we advise that decommissioning should aim to remove infrastructure to reduce the potential for irreversible (permanent) habitat loss. We advise that the assessment should consider the worst-case scenario of irremovable cable protection, where doubt exists over the possibility of removal. We understand that the Applicant plans on producing a 'decommissioning Programme which will be developed and updated throughout the</p>		The Applicant has provided further information, which we have provided comments on in Appendix DF 2. Our comments remain unchanged on these issues and we advise that the plans requested are provided.		No change		It remains Natural England's advice that an outline decommissioning plan should be submitted into the examination, as highlighted again in our response to BP 1.5 of the examiners questions first set of written questions. We understand that the Applicant intends on submitting further information relating to this point at deadline 4.		<p>As detailed within the Applicant's Responses to Relevant Representations [REP1-017], the Applicant notes that secondary protection will only be used where necessary as preferentially cables will be buried where possible, as informed by the cable burial risk assessment. The Applicant confirms that it will commit to the use of secondary protection material that has the greatest potential for removal on decommissioning of the Proposed Development as set out within the new commitments C-289 and C-300.</p> <p>The Applicant is committed to minimising the release of plastics into the marine environment, and commits to using suitable alternatives, where this is practicable (and importantly, where alternative options are available to purchase). C-288 and C-289 have been added to the commitments register and have been included in the Outline Scour Protection and Cable Protection Plan [REP3-039] (updated at Deadline 5), secured in Condition 11(1)(i) of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5)).</p> <p>Furthermore, the Applicant has committed to C-300: "Cable protection will be used that minimises the environmental impacts as far as practicable. At the point of selecting a cable protection supplier, consideration will be given to using the method of cable protection which is likely to be removable at decommissioning."</p> <p>This has been added to the Commitment Register [REP4-057] (updated at Deadline 5) and will be secured in the Outline Scour Protection and Cable Protection Plan [REP3-039] (updated at Deadline 5) at Deadline 5.</p> <p>The Applicant is submitting an Outline Cable</p>

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	<p><i>lifetime of the Proposed Development to account for changing best practice'. It would be helpful if an Outline Decommissioning Plan was included at this stage, with the details agreed with stakeholders, including Natural England, based on best practice at the time of decommissioning.</i></p> <p>We advise that the Applicant produces a reburial hierarchy, which has external cable protection as a last resort. An outline of the process for reburial should be included with the Cable Specification and Installation Plan. We would welcome limits being placed on the Maximum Design Scenario to only use types of scour protection that have the greatest likelihood of being removed. We advise careful consideration should be given to the nature of the cable protection materials used as some may be damaging to the marine environment in their own right.</p>								<p>Burial Risk Assessment (Document Reference: 8.85) and Outline Cable Specification and Installation Plan (Document Reference: 8.88) at Deadline 5, in response to Action Point 19 of the Action Points arising from ISH 2 [EV5-018].</p> <p>The Energy Act (2004) requires that a decommissioning plan must be submitted to and approved by the relevant Secretary of State, a draft of which will be submitted prior to the construction of the Proposed Development. The decommissioning plan and programme will be updated during the Proposed Development's lifespan. To take account of changing best practice and new technologies, the approach and methodologies employed at decommissioning will be compliant with the legislation and policy requirements at the time of decommissioning. In accordance with requirement 11 provided in the Draft Development Consent Order [REP4-004] (updated at Deadline 5), a written decommissioning programme will be submitted to the Secretary of State pursuant to the Energy Act prior to works commencing.</p>

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	We advise that an Outline Decommissioning Plan is provided by the Applicant that utilises lessons learnt from projects that are due to be decommissioned the near future.								
F12	We note that mitigation measures that require burial and the potential need for scour prevention, and options for cable protection will be considered in a detailed Cable Burial Risk Assessment. We highlight the limitations in our confidence in the impact assessment, and the viability of mitigation measures presented prior to more detailed site-specific geotechnical data being gathered to inform this. It is stated that this report <i>'will consider geological conditions in detail. RED will be using different burial equipment on Rampion 2 (compared to Rampion 1) and so the likelihood of exposure is considered much lower'</i> . Natural England advises		No change		No change		No change		As detailed within the Applicant's Responses to Relevant Representations [REP1-017] , the outline methods proposed for cable burial on the Proposed Development are broadly similar to those proposed by Rampion 1 at the consenting stage. The comment 'RED will be using different burial equipment on Rampion 2 (compared to Rampion 1)' reflects that the majority of the cable burial works on Rampion 1 were completed in 2017 and 2018, with works on the Proposed Development likely being undertaken circa 10 years after this. Since the construction of Rampion 1, the industry has and will have installed thousands more km's of subsea cable before these works are carried out on the Proposed Development. The learnings from this experience applied to the development and fabrication of new and more efficient burial tools, which are expected to be proposed by contractors bidding for the cable installation works, are likely to lower the risk of exposure. Geotechnical information will be collected post-consent and will be provided to potential cable installers during the tendering for these works. A technical evaluation of the methods proposed by the tendering parties will be undertaken as part of the preparation of the Final cable burial risk assessment which will be in line with the Outline

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	<p>that it would be useful for a comparison on the equipment and methods to be clearly set out (including lessons learnt), given the Rampion 1 monitoring identified cable exposure, and there appears to still be a range of burial options under consideration for Rampion 2. We advise geotechnical information is provided within a Cable Burial Risk Assessment at the consenting phase. We request that a clear comparison between the burial equipment used for Rampion 1, and all options that might be used for Rampion 2, is provided to evidence this point. We advise that the Rampion 1 monitoring data are considered in any assessment.</p>								<p>cable burial risk assessment (Document Reference: 8.85) (submitted at Deadline 5) and used as part of the decision-making process to select the preferred supplier. The aim of the project will be to select a contractor who, with their selected equipment and proposed methods, will be able to bury the subsea cables in accordance with the commitments and the mitigation secured through the dML and minimise the likelihood of future cable exposures. This will help the project avoid having to undertake expensive remediation works. The Final cable burial risk assessment will be completed by the party contracted to undertake these works during the detailed design stage.</p> <p>Regarding Rampion 1 post-construction monitoring data specifically, it is the Applicant's understanding that the reports for the first two years of monitoring were submitted to the respective discharging authorities in August 2023 and comments have recently been returned to Rampion 1. As such, the reports have not yet been signed off by the discharging authorities and are therefore subject to change. The evidence within such reports is still confidential and not yet in the public domain and as such, should not form the basis for this representation. The evidence from the Rampion 1 post-construction reports is not yet available for the Proposed Development to include in the ES, due to the reasons mentioned above. When the information is publicly available, it will be taken into account in the relevant management plans.</p> <p>The Applicant is submitting an Outline Cable Burial Risk Assessment (Document Reference: 8.85) and Outline Cable Specification and Installation Plan (Document Reference: 8.88) at Deadline 5, in response to Action Point 19 of the Action Points arising from ISH 2 [EV5-018].</p>

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F13	We note that there are areas where cable burial is not expected to be possible, and therefore scour may occur or scour prevention may be required, which could be in close proximity to Kingmere MCZ. Additionally, it is possible that turbines and associated scour prevention could be placed near to Offshore Overfalls MCZ. Therefore, we advise that further justification is required within this chapter in relation to the potential secondary impacts on designated benthic features within these sites. This should also be fully considered in the MCZ Assessment. We advise that further justification is provided, and the Applicant provides an up to date MCZ assessment.		No change		No change		No change		As detailed within the Applicant's Responses to Relevant Representations [REP1-017] , the applicant refers NE to paragraph 9.10.15 et seq., within Chapter 9: Benthic, subtidal and intertidal ecology, Volume 2 of the Environmental Statement (ES) [REP4-018] (updated at Deadline 5) where cable protection is used, some scouring is predicted to occur throughout the operational phase at these features. The extent of this scouring is predicted to be local, occurring around the perimeter of rock berms. This is confirmed within Chapter 6: Coastal processes, Volume 2 of the ES [APP-047] , which informs the benthic assessment, with the magnitude of the impact on all benthic receptors is therefore considered to be negligible. The maximum extent of scour predicted within Appendix 6.3: Coastal processes technical report Impact assessment, Volume 4 of the ES [APP-131] (updated at Deadline 5) relates to that occurring around foundation structures, with a maximum of up to 28.1 m radius from the largest monopile foundations and up to 100 m from the centre of the largest jacket foundations (this is measured from the centroid of the foundation structure; maximum radius from an individual pin-pile equates to a maximum of 10.4 m). The assessment of potential impacts arising on the conservation objectives of features within the MCZs are thus screened out as reported in Table 5-1 of the Draft Marine Conservation Zone Assessment [APP-040] .
F14	We advise that monitoring from Rampion 1 is used to inform predictions of impacts from scour prevention. We seek clarity regarding whether the figures stated for scour prevention are		No change		No change		No change		As detailed within the Applicant's Responses to Relevant Representations [REP1-017] , the potential dimensions of scour are described in Section 6, Appendix 6.3: Coastal processes technical report impact assessment, Volume 4 of the Environmental Statement (ES) [APP-131] (updated at Deadline 5). The assessment identifies that seabed scour will be very localised and where it does develop, limited to the area immediately

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	based on benthic survey information. Natural England should be consulted on the final Scour Prevention and Cable Protection Plan. Within updated ES documents the Applicant must demonstrate how Rampion 1 monitoring and the benthic survey data have been considered. As well as working with the Applicant on the revised Scour Prevention and Cable protection plan during the examination Natural England must be consulted on final plan as part of a DCO/dML conditioned.								adjacent to the installed infrastructure. There is no predicted significant effect on wider scale sediment transport rates or patterns, and will not result in any net change in the volume of sediment available in the local or regional system. An Outline Scour Protection and Cable Protection Plan [REP3-039] (updated at Deadline 5) has been submitted alongside the Application, with the final Plan submitted to and approved in writing by the MMO as secured in Condition 11(1)(i) of the dMLs Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5)). Regarding Rampion 1 post-construction monitoring data specifically, it is the Applicant's understanding that the reports for the first two years of monitoring have been submitted to the respective discharging authorities in August 2023 and comments have recently been returned to Rampion 1. As such, the reports have not yet been signed off by the discharging authorities and are therefore subject to change. The evidence within such reports is still confidential and not yet in the public domain and as such, should not form the basis for this representation. The evidence from the Rampion 1 post-construction reports is not yet available for the Proposed Development to include in the ES, due to the reasons mentioned above. When the information is publicly available, it will be taken into account in the relevant management plans.
F15	"We note that Table 9.15 mentions burial of 1.5m with regards to reducing the effects of Electro Magnetic Fields (EMF). We note that a target burial depth of 1m is quoted for		No change		No change		No change		As detailed within the Applicant's Responses to Relevant Representations [REP1-017] , the cable burial depths will be determined as set out in paragraph 4.3.54 within Chapter 4: The Proposed Development, Volume 2 of the Environmental Statement (ES) [APP-045], which is reflected in commitment C-41 of the Commitments Register [REP4-057] (updated at Deadline 5) for the array

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	<p>interconnector and array cables, which is less than 1.5m. Additionally, commitment C-41 states 1m. We advise that a consistent value is used, and evidence is referenced to support this. We question whether current information of benthic conditions has been used to inform the likelihood of achieving this across the various seabed conditions of the site. Has insight from success or failure of achieving burial depth at Rampion 1 in different sediment types been used to inform the assessment? If this target is not likely to be achievable based on the current information, the effectiveness of this mitigation measure for EMF pathways is reduced. The Applicant is to clarify what the burial depth commitment is, and how likely it is that the cable burial depth will provide the required mitigation. We advise that the viability of this should be informed by geotechnical data, lessons learnt for</p>								<p>cables (as secured by the Draft Development Consent Order [REP4-004] (updated at Deadline 5), Schedule 11, Part 2, Condition 2 (7)). The response to F11 sets out the process for selecting the cable installation contractors in order to meet the required burial depth according to the cable burial risk assessment. This will take into account information from the post construction monitoring from Rampion 1, when publicly available. If it is not possible to bury a particular section of cable to the desired burial depth, cable protection will be considered as described in paragraph 4.3.68 within Chapter 4: The Proposed Development, Volume 2 of the ES [APP-045]. The proposed burial of the subsea cables and the application of additional cable protection if needed, will provide a separation between buried cables and the seabed surface and therefore effects from EMF will be appropriately reduced.</p>

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F16	<p>Rampion 1 and the Cable Burial Risk Assessment."</p> <p>Our comments in the coastal processes section regarding scour should be considered here, including consideration of scour monitoring in relation to Rampion 1. Based on our current understanding of the situation at Rampion 1, and the fact that it is suggested that there are likely to be issues burying the cable and scour around any scour protection, we advise that the magnitude of impact is not Negligible. We advise further consideration of this issue is required by the applicant in the cable specification and installation plan and/or the scour prevention and cable protection plan and the magnitude adjusted in the ES.</p>		No change		No change		No change		<p>As detailed within the Applicant's Responses to Relevant Representations [REP1-017], commitment C-44 of the Commitments Register [REP4-057] (updated at Deadline 5) sets out that a Final Scour Protection and Cable Protection Plan will be completed prior to construction commencing and submitted to the Marine Management Organisation (MMO) for approval and this is secured in Condition 11(1)(i) of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5)).</p> <p>The potential dimensions of scour are described in Section 6, Appendix 6.3 Coastal processes technical report Impact assessment, Volume 4 of the Environmental Statement [APP-131] (updated at Deadline 5). The assessment identifies that seabed scour will be very localised and where it does develop, limited to the area immediately adjacent to the installed infrastructure. There is no predicted significant effect on wider scale sediment transport rates or patterns and will not result in any net change in the volume of sediment available in the local or regional system.</p>
F17	<p>Natural England advises that we do not regard a change to new hard sediment as a beneficial impact, as this is loss of what would naturally be present. Additionally, as</p>		No change		No change		No change		<p>As detailed within the Applicant's Responses to Relevant Representations [REP1-017], the Applicant is clear within paragraphs 9.10.22 and 9.10.23, Chapter 9: Benthic, subtidal and intertidal ecology, Volume 2 of the Environmental Statement (ES) [REP4-018] (updated at Deadline 5) that any biodiversity and</p>

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	<p>this is a permanent change, the magnitude cannot be Minor based on the Applicants own definitions. We advise the Applicant updates the ES assessment accordingly.</p>								<p>biomass increase as a result of introduction of new hard substrate may also have indirect adverse effects on the soft sediment communities and also represents a change in the baseline. The final sensitivity assessment is also regarded as medium and is not noted as positive to sediment biotopes.</p> <p>In relation to the magnitude, the matrix presented in Table 9-8, Chapter 9: Benthic, subtidal and intertidal ecology, Volume 2 of the ES [REP4-018] (updated at Deadline 5) not only delineates the temporal nature of the impact but is also clear in stating other aspects, for example in the 'Minor' category it also states 'and/or limited but discernible alteration to key characteristics or features of the particular receptors character or distinctiveness'. For example, whilst permanent habitat loss from cable protection is regarded as long-term/permanent, in relation to the availability of broadscale habitats, the impact magnitude is regarded as low and therefore should not be classified as a major/moderate impact on account of the limited alteration. It is also notable that sensitive features have additional mitigation applied, where relevant, to reduce the magnitude of impacts. On this basis, the Applicant considers the assessment to be robust and accurate and no update to the magnitudes presented within the ES is required.</p>
F18	<p>It is stated that <i>'the geological conditions are not entirely conducive to burial. Even so, many of the geological formations along the route are considered trenchable with mechanical cutting, although other formations that are</i></p>		No change		No change		No change		<p>As detailed within the Applicant's Responses to Relevant Representations [REP1-017], the source of this information is provided within Appendix 9.5: Technical Note Cable Corridor area mitigation for sensitive features, Volume 4 of the Environmental Statement[APP-145] and relates to the export cable.</p> <p>Geotechnical information will be collected post consent with the Cable Burial Risk Assessment (which will be submitted for approval, prior to</p>

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	<p><i>strongly cemented are likely to pose an issue' and that 'In total, 2.35km of route length (per cable) may require a level of alternative protection, such as rock dumping. Overall, the engineering study has identified that a mechanical cutting trencher is necessary for up to 54% of the route length, of which 13% is considered likely to require further protection with rock placement. The remaining 46% is considered possible to achieve with jet trenching. This can be further clarified when route-specific geotechnical data is obtained at the pre-construction stage and the burial potential is confirmed (RED, 2022)'. Natural England requires clarity on where this information has been sourced, and whether this includes all aspects cabling, or just the export cable? We advise that consideration needs to be given to the impact this could have on the efficacy of the mitigation measures proposed</i></p>								<p>construction commencing) secured in Condition 11(1)(n) of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5)) also carried out after consent award. Please see the Applicant's response to F11 for further details.</p> <p>The Applicant is submitting an Outline Cable Burial Risk Assessment (Document reference 8.85) and Outline Cable Specification and Installation Plan (Document reference 8.88) at Deadline 5, in response to Action Point 19 of the Action Points arising from ISH 2 [EV5-018].</p> <p>The Applicant will explore alternative cable installation methods with a reduced environmental impact on sensitive features during the detailed design.</p>

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	<p>generally, particularly 'routeing design and micrositing', and 'use of specialist cable laying and installation techniques' considering less than half the route appears to be suitable for jet installation. This may limit, or even prevent the recovery of sensitive features, where sufficient micrositing is not achievable. We advise there is the potential for permanent habitat loss/potentially significant habitat alteration if sensitive features cannot be avoided. We advise that the source of this information is provided, and that the impact of this on the mitigation measures is considered here and throughout the impact assessment. We agree that a hierarchy of jetting where possible first, before trenching is considered and minimising cable routing through harder strongly cemented formations is preferable. Pinning the of the cable and extending the HHD ducts should also be considered. Without the</p>								

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F19	<p>Cable Burial Risk Assessment and pre-construction information, we cannot fully understand the final constraints and therefore final impacts. We advise that, based on this situation a Cable Burial Risk Assessment, including route-specific geotechnical data is provided at the consenting stage.</p> <p>Natural England seeks clarity on whether any rock protection is likely to be required around the HDD exit pit, either temporarily or permanently. We advise information is provided on this and the ES chapter updated accordingly including any mitigation measures.</p>		No change		No change		No change		<p>As detailed within the Applicant's Responses to Relevant Representations [REP1-017] and as indicated in the ES, the final construction design for the landfall , including the need for temporary or permanent protection measures which include but are not limited to rock protection at the exit pit will be determined post-consent and will take into account pre-construction ground investigation surveys. Rock protection will be placed within the landfall exit pit to stabilise the ducting and cable. This installation is expected to be fully below the seabed surface following completion of construction.</p> <p>The Applicant considers that this detail is presented in Chapter 4: The Proposed Development, Volume 2 of the Environmental Statement [APP-045] in section 4.4. The Applicant will consider updating this text to provide more clarity around the landfall exit pit construction for Deadline 6.</p>
F20	We support the decommissioning phase		The Applicant has provided		No change		No change. We understand that the		As detailed within the Applicant's Responses to Relevant Representations [REP1-017] , the

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	<p>being assessed as potentially the same significance as the construction phase at this stage. We advise that all scour and cable protection should be considered as needing to be removed. We advise this is considered by the Applicant during the consenting phase as part of an Outline Decommissioning Plan.</p>		<p>further information, which we have provided comments on in Appendix DF 2. Our comments remain unchanged on this issue and we advise that the plan requested is provided.</p>				<p>Applicant intends on submitting further information regarding decommissioning at deadline 4.</p>		<p>Applicant welcomes Natural England's support that the decommissioning phase has been assessed as potentially the same significance as the construction phase.</p> <p>The Energy Act (2004) requires that a decommissioning plan must be submitted to and approved by the relevant Secretary of State, a draft of which will be submitted prior to the construction of the Proposed Development. The decommissioning plan and programme will be updated during the Proposed Development's lifespan. To take account of changing best practice and new technologies, the approach and methodologies employed at decommissioning will be compliant with the legislation and policy requirements at the time of decommissioning. In accordance with the requirements provided in the Draft Development Consent Order [REP4-004] (updated at Deadline 5), a written decommissioning programme will be provided prior to works commencing.</p> <p>The details of the proposed decommissioning process will be included within the Decommissioning Programme which will be developed and updated throughout the lifetime of the Proposed Development to account for changing best practice. It is noted that this will be subject to best practice at the time of decommissioning and surveys conducted to assess the quality of the communities established and a decision on their removal made in conjunction with the statutory authorities.</p> <p>Furthermore, it is not considered appropriate for an Outline Decommissioning Plan to be provided pursuant to the consenting process under the Planning Act 2008, as the decommissioning process for offshore wind farms is controlled by the Energy Act 2004. Section 105 of the Energy Act</p>

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F21	While the intention may be to bury the cables, it is assumed that these cables require some cable protection allocation for where burial is not possible. This should be considered within this cumulative assessment. We advise that cable protection is included by the Applicant in an updated cumulative assessment.		No change		No change		No change		<p>2004 requires that the Secretary of State may, by notice, require a decommissioning programme for a renewable energy installation, to include the details set out in that section. In reflection of this the Draft Development Consent Order [REP4-004] (updated at Deadline 5) provides, at Schedule 1 (the Authorised Project) Part 3 (Requirements), requirement 11, that no offshore works are to commence until a written decommissioning programme in compliance with any notice served upon the undertaker by the Secretary of State pursuant to section 105(2) of the Energy Act 2004 has been submitted to the Secretary of State for approval. This approach is consistent with recently as made offshore wind farm DCOs, including The East Anglia ONE North Offshore Wind Farm Order 2022, The East Anglia TWO Offshore Wind Farm Order 2022 and The Awel y Môr Offshore Wind Farm Order 2023. It is also consistent with the terms of NPS EN-3 2011 (paragraphs 2.6.53 and 2.6.54).</p> <p>As detailed within the Applicant's Responses to Relevant Representations [REP1-017], certain impacts assessed for the project alone are not considered in the cumulative assessment due to the highly localised nature of the impacts (i.e. they occur entirely within the Order Limits only) and/or where the potential significance of the impact from the Proposed Development alone has been assessed as negligible. Therefore, the impact of cable protection has not been included within the cumulative effects assessment (CEA).</p>
F22	It is stated in this section that ' <i>RED confirmed that floatation pits are no</i>		The Applicant has provided further		No change		We note the new commitment C-297, which states that the		The Applicant welcomes Natural England's support on the commitment not to use flotation pits, but wishes to highlight that the omission of this

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	<p><i>longer required for Rampion 2. RED will commit to using an alternative solution, such as rock filter bags (or similar) for seabed preparation purposes.'</i> Natural England supports the commitment to not use floatation pits, given the known impacts and loss of irreplaceable habitat incurred by this methodology for Rampion 1. It is stated in this section that 'Gravel bags laid on the seabed to protect the cable barge during construction of Rampion 2, will be removed prior to the completion of construction, where practicable'. Natural England advises that this commitment is not sufficient in relation to mitigating impacts on priority habitats, Annex I habitat and potential habitats suitable for bream nests. If gravel bags are to be used, the Applicant needs to provide sufficient evidence that they can be removed and that the bags will not break down during use (particularly from abrasion with the</p>		<p>information, which we have provided comments on in Appendix DF 2. Our comments remain unchanged on this issue. We advise that the appraisal of all possible options we requested has not been provided.</p>				<p>location of gravel beds will be microsited to avoid sensitive features, where practicable, which we support. We note that the Applicant states there would be abrasion of the underlying chalk from the use of gravel bags in 1.13. Natural England continue to advise that any loss of chalk should be considered a permanent loss of this Habitat of Principle Importance. Natural England maintains our advice that a full appraisal of all possible options should be provided. We note that commitment C-283 only commits to removing gravel bags prior to completion of construction, where possible. We advise that the gravel bags should be on the seabed for the minimum period required and that removal 'where possible' is not in line with the Applicants previous commitment to full remove the gravel bags. We note that the Applicant's response to deadline 2 submission document also appears to suggest 'If damage was to occur to the bags</p>		<p>method requires that either grounding of the vessel (the Applicants preferred solution) or the use gravel bag beds would be required to ensure the stability of the cable installation vessel during low tide.</p> <p>The Applicant has provided an impact assessment to support the requirement for grounding the cable installation vessel in order to install the export cables as the previously adopted alternative (floatation pits) used at the Rampion 1 OWF project was discounted for the Proposed Project following engagement with consultees, notably through the Evidence Plan Process. This assessment was detailed within the Applicant's Deadline 1 Submission – Appendix 13 – Further Information for Action Point 45 and 46 – Physical Processes and Benthic [REP1-030]. The use of gravel bags will be required in the situation where the cable installation vessel will need to ground to enable the installation work to proceed, but the pre-construction survey information has demonstrated a risk that the cable installation vessel could be damaged by grounding. The use of gravel bags during the grounding of the vessel is regarded as the maximum design scenario in comparison to undertaking the cable installation without gravel bags due to the length of time the gravel bag beds would need to remain on the seabed and the larger total area required (as the gravel bags, if required, would need to be suitably larger than the hull of the vessel). The cable installation vessel would be present for one or two tidal cycles at each location where it would need to ground, whereas the gravel bags would be in place for approximately six weeks and would have a greater surface area than the vessel alone.</p> <p>As detailed within the Assessment of Gravel Beds document (Deadline 1 Submission – Appendix 13 – Further Information for Action Point 45 and</p>

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	<p>barge). We note there is inconsistency throughout the application documents regarding the methodology to be employed, with some mention of loose material being used, which we are concerned is unlikely to be retrievable. We advise that any methodology selected should have demonstrable recoverability to pre installation state (OSPAR). We advise that the Applicant should provide a lessons learnt from Rampion 1 and a full appraisal of all possible options, with a commitment to using the methodology that minimises the environmental impacts the most. This should include the possibility of extending the HDD further out. The total impacts of the exit pit should be compared to the total impact of grounding out the vessel at several locations. Natural England advises that an appraisal of all possible options is provided, which includes consideration of lessons</p>						<p>and some of the gravel material was left on the seabed, this is deemed to be of Minor significance on account of the natural presence of gravels across the offshore'. Natural England advises we disagree with this statement and suggest if the Applicant is not confident full removal is possible, it should be considered what measures may need to be put in place to mitigate the potential impacts on underlying habitats from loose gravel. We advise that the locations of the gravel bags should be monitored post consent.</p>		<p>4 – Physical Processes and Benthic [REP1-030], the sensitivity of all subtidal biotopes that have been predicted to characterise the proposed area for gravel bag placement have been assessed according to the detailed MarESA sensitivity assessments. This assessment has determined that all biotopes have a 'low' to 'medium' sensitivity to a disturbance of this nature. Therefore, given the relatively small spatial scales for the total habitat disturbance outlined above, this loss is not expected to undermine regional ecosystem functions or diminish biodiversity.</p> <p>The methods for installing and removing gravel bags will be detailed at the construction stage. It is likely that this method will involve barges with lifting equipment, lowering and lifting the bags out of the water. It is likely that filling of the bags will take place at a port location. Risk assessments and method statements will be utilised to minimise the potential to damage any gravel bags when they are installed and if they are required to be removed.</p> <p>The Applicant highlights that at this stage, no procurement process is yet in progress to provide details of possible suppliers and specifications of the bagging material that has the potential to be used for the gravel or rock bags which may be deployed at the Proposed Development. The Applicant would note, however, that suppliers advertising such products include a firm named Ridgeway (www.rockbags.com), which supply rock bags made from 100% polyester for marine applications, but would note similar bags are available from other suppliers. In addition, a company named Jaeger Maritime Solutions (https://www.jaegergroup.com/en/products/green-products/marine-technology/scour-protection/) supply rock bags made of a basalt based fabric.</p>

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	<p>learnt from Rampion 1. This is required so that the full environmental impacts can be considered and assessed, and to evidence the achievability of mitigation.</p>								<p>Cable landfall works are weather sensitive operations. If a gravel bag solution were to be utilised, then a sufficient amount of time would need to be allowed to ensure that a suitable weather window becomes available so the works could be executed. Where possible but noting that the likely good weather periods are already restricted by the black bream spawning period, the Applicant will aim to minimise the period over which the temporary gravel bag beds are in place.</p> <p>The detailed design of the landfall construction works will take place post-consent with the appointed contractor, taking account of survey information also gathered post consent. The principal means of determining the method used will be technical viability, with consideration given to minimising environmental impact. The variables which will feed into the design are:</p> <ul style="list-style-type: none"> - Landfall crossing exit location: This will be located seaward of MLWS. Ideally this should be as far as possible from the shore, but this will ultimately be limited by the ground conditions encountered and capability of the chosen construction method, such as HDD. - Use of duct extension: This would extend the exit point of the duct further out to sea, meaning the installation vessel wouldn't need to get as close to the shore for the cable pull in operation. However more works close to shore would be required to install it. During detailed design, the Applicant will assess the feasible maximum distance from shore to site the cable installation vessel during cable installation. However, there are technical limitations that need to be considered, such as the maximum allowable pull-in forces onto the cable. - Grounding the cable installation vessel: Being able to ground the vessel will enable the vessel to

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									<p>get closer to the shore but will depend on the seabed being suitable and vessel specific limitations.</p> <ul style="list-style-type: none"> - Use of gravel bag beds: If the seabed isn't suitable for grounding the cable installation vessel, gravel bag beds could be designed and placed allowing the grounding to occur. However, this will need a lot of material and a suitable vessel spread to install and remove the gravel bags. - Seasonal restrictions and consequences for installation operations: As per Commitment C-273 in the Commitments Register [REP4-057] (updated at Deadline 5) export cable installation is only permitted to occur outside of March to July inclusive, which excludes some of the best weather months to complete cable installation works. <p>The contractor will be asked to develop a suitable method, which will inform the Final Cable Specification and Installation Plan, which is required to be submitted and approved by the MMO prior to the works commencing as secured in Condition 11(1)(n) of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5). This may incorporate other ideas and solutions for being able to complete the works in the most effective manner possible, however any methodology brought forward would be required to adhere to (i.e. not exceed) the limits imposed by the worst-case assessed in the ES, as part of the consenting process.</p> <p>The Applicant has provided reasons for not submitting a cable installation method appraisal in Applicant's response to Action Points Arising from ISH2 and CAH1 for Deadline 5 (Document Reference: 8.91) submitted at Deadline 5.</p>

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F23	Whilst we understand that the Applicant is committing to minimising the distance of the route through subtidal chalk, we advise that our previous advice regarding consideration of extending the HDD exit pit location further offshore to potentially further minimise impacts on chalk does not appear to have been considered. We advise this is considered as part of an appraisal of all potential options to minimise the damage to this irreplaceable habitat.		See F22		No change		We note that point 2.1.11 of the Applicant's response to deadline 2 submissions, suggests that the 'detailed design of the landfall construction works will take place post-consent with the appointed contractor, taking account of survey information also gathered post consent. The principal means of determining the method used will be technical viability, with consideration given to minimising environmental impact.' We note the options to be fed into this design included the location of the exit pit, potential use of duct extensions, vessel grounding or the use of gravel bags. Natural England's advice remains that full consideration needs to be given to using the methodology that minimises the loss of irreplaceable chalk as far as possible.		<p>The Applicant refers Natural England to its response above. Designing the works will involve considering the location of the HDD exit pit being as far from the shore as possible (taking account of engineering constraints), the potential use of duct extensions, the use of vessel grounding, and the use of gravel bag beds, which are all required for the export cable transition from marine to landfall rather than representing alternatives to each other. The suggested comparison between the area affected by the HDD pit against that of the vessel grounding area is thus not a relevant comparison in terms of assessing a worst case.</p> <p>The Applicant highlights that, as set out within the ES, the final construction design for landfall HDD will be determined post-consent and will be based on detailed geotechnical and geological data to develop the final HDD alignment that is in keeping with its commitments including minimising the disturbance to subtidal chalk as per C-269 (secured in Condition 11(1)(c)(v) of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5) in the Commitments Register [REP4-057] (updated at Deadline 5).</p> <p>Taking construction risk and the maximum distance limitations of the technique into account, it is not possible to extend the HDD to the extent that all the inshore chalk area is avoided, and it is on this basis that the assessment has been undertaken and presented within Chapter 9: Benthic, subtidal and intertidal ecology, Volume 2 of the Environmental Statement [REP4-018] (updated at Deadline 5).</p>
F24	Natural England notes that following key Habitats of Principal Importance (Section 41		No change		No change		We note that point 4.2.2 of the In Principle Sensitive Features Mitigation Plan has been		The Applicant would highlight that it has committed to undertaking detailed pre-construction surveys, which will fully map the extent of the chalk habitat, stony reef, peat and clay exposures, and potential

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	<p>of the NERC Act (2006)) have been identified within the study area:</p> <ul style="list-style-type: none"> •Sabellaria spinulosa •Littoral, sublittoral chalk, subtidal chalk •Fragile sponge and anthozoan communities on subtidal rocky habitats • Peat and clay exposures • Sublittoral sands and gravels, and sheltered muddy gravels. <p>Additionally, the following Annex I features have been identified:</p> <ul style="list-style-type: none"> • Annex I stony reef • Annex I Bedrock Reef. <p>Black seabream (a feature of the adjacent MCZ) nests have also been known occur over the cable corridor. Natural England's conservation advice suggests these are often found on near horizontal bedrock with a thin layer of sediment, and often track the moderate energy infralittoral rock and thin mixed sediments feature of the MCZ. Nests are often associated with rocky outcrops in shallow waters (<10 m) with thin sediment veneers. Natural England advises that these features should</p>						<p>updated to include 'Throughout export cable installation activities, there will be no anchoring of vessels within the MCZ or other designated site boundaries'. Whilst we support there being no anchoring in designated sites, we advise that this does not address our concerns regarding the micrositing of anchoring around the sensitive habitats listed in this point. Additionally, this does not address our advice in relation to avoiding designated sites, and micrositing around sensitive features outside of sites in relation to siting of turbines, construction equipment (particularly jack up barges/rigs, which we assume may be used if anchors are not), and all operations and maintenance works. We note the addition of peat and clay exposures to the export cable installation commitments, which we agree should be included. We note that this update does not always follow through into other parts of the text e.g point 5.2.4. We</p>		<p><i>S. spinulosa</i> reef, as referenced in the Offshore In Principle Monitoring Plan [REP4-055] (updated at Deadline 5), the provision of which is secured in Condition 11(1)(j) of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5)). The Applicant will ensure the extent of these features are mapped as part of these surveys and can confirm that these data will be less than two years old to inform installation micrositing as well as micrositing of anchors where relevant and required, as secured in Condition 11(1)(a)(v) of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5)). Where micrositing has been required during construction, the Applicant asserts that the measure would be anticipated to provide for operation and maintenance activities at the same infrastructure locations for all non-ephemeral features. For operations and maintenance works required in areas where the presence of <i>S. spinulosa</i> reef has been recorded in the pre-construction surveys (and therefore a risk of the development of such ephemeral features exists), focused re-survey for the presence of <i>S. spinulosa</i> reef will be undertaken ahead of such works if data less than 2 years old are not available. Proposals for micrositing around priority habitats, which importantly will be based on the results of the pre-construction surveys, are presented within the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5) secured in Condition 11(1)(k) of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5) and will inform the detailed design plan required to be submitted and approved pursuant to condition 11(1)(a) of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5)).</p>

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	<p>have their extent fully mapped as part of the pre-construction surveys, to inform avoidance via micro-siting around them wherever possible. In addition to known black seabream nests sites, we advise that, as part of the pre-construction survey, suitable habitat for bream nesting is mapped.</p> <p>In relation to stony reef, we advise Golding (2020) is considered in addition to Irving (2009).</p> <p>We advise that the commitment to micro-siting in relation to these features (C29) should also be applied to the siting of turbines, construction equipment (such as jack up barges and anchors), and all operations and maintenance works. This will require the Applicant to have data less than two years old to inform any ongoing operations and maintenance works that results in direct disturbance to areas where priority, Annex 1 biogenic reef habitats,</p>						<p>advise that the document is amended to consistently reflect this update. All other points remain unaddressed.</p>		<p>As detailed within the Offshore In Principle Monitoring Plan [REP4-055] (updated at Deadline 5), where chalk habitat, stony reef and <i>S. spinulosa</i> reef is identified during the baseline survey, a single post-construction survey, specifically targeting those habitats and reefs identified in the baseline survey will be undertaken as a check on their condition using the same methodology set out for pre-construction monitoring. Where no stony reef and/or <i>S. spinulosa</i> reef is identified by the preconstruction survey of the proposed works (and associated buffers), no post-construction surveys of these features will be undertaken.</p> <p>As detailed within the Offshore In Principle Monitoring Plan [REP4-055] (updated at Deadline 5), the scope and design of all monitoring work should be finalised and agreed following review of the results of any preceding survey and/or monitoring work (i.e., an adaptive approach), including those surveys conducted in support of the environmental impact assessment (EIA). This includes the potential for future survey requirements to be adapted based on the results of the monitoring outlined. Where it has been agreed that there are no significant impacts, monitoring need not be conditioned through the dMLs.</p> <p>In relation to stony reef, as requested by Natural England, the Applicant will ensure that Golding (2020) is considered in addition to Irving (2009), during pre-construction survey analysis. The reference has been added in Offshore In Principle Monitoring Plan [REP4-055] (updated at Deadline 5).</p> <p>The Applicant can confirm that there will be no direct impact to a designated site, with benthic features of interest, from the footprint of the development.</p>

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	<p>areas of habitat suitable for bream nests could be present. This will likely require ongoing data collection throughout the project lifetime. We advise that the requirement to avoid priority habitats where possible is specified in the commitments, and that this should be a condition of the DCO/DML. The monitoring to inform micro-siting should also be included within the IPMP. NB: Rampion 1 micro-sited around areas of stony reef in consultation with Natural England and the MMO so there is a similar expectation that Rampion 2 would instigate micro-siting too.</p>								<p>The Applicant has updated the In Principle Sensitive Features Mitigation Plan [REP4-053] at Deadline 5 to ensure that peat and clay is referred to throughout the document.</p>
F25	<p>Natural England requires clarification that both outcropping chalk and chalk with a thin sediment veneer, which would also be considered subtidal chalk, have been considered in the assessment. Natural England requests that the Applicant provides clarity on this and ensures that the ES has</p>		No change		No change		No change		<p>As detailed within the Applicant's Responses to Relevant Representations [REP1-017], the Applicant can confirm that all chalk has been considered in relation to potential impacts within Chapter 4: The Proposed Development, Volume 2 of the Environmental Statement [APP-045] thereby presenting the worst case on the occurrence of chalk across the proposed DCO Order Limits.</p>

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F26	<p>assessed outcropping chalk correctly.</p> <p>It is stated in this section that <i>‘Observations of discrete Sabellaria spinulosa reef habitats were deemed to be of low ‘reefiness’ across the development site’</i>. Natural England advises that Sabellaria spinulosa reef of all quality is protected under Section 40 and 41 of the Natural Environmental and Rural Communities (NERC) Act 2006. Therefore, due regard must be given to the conservation of this habitat. We advise these biotopes are given national importance. Natural England seeks clarity on whether all areas where potential reef was identified from the geophysical survey were investigated with DDV. We advise that this will be required for pre-construction surveys to ensure the full extent of all areas of reef is understood to inform micro-siting. Natural England advises that all areas of Sabellaria spinulosa and stony reef are identified and</p>		No change		No change		No change		<p>The Applicant would highlight that it has committed to undertaking detailed pre-construction surveys as referenced in the Offshore In Principle Monitoring Plan [REP4-055] (updated at Deadline 5), the provision of which is secured in Condition 11(1)(j) and Condition 16(1)(a) of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5)). Proposals for micro-siting around priority habitats, which importantly will be based on the results of the pre-construction surveys, are presented within the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5) secured in Condition 11(1)(k) of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5) and will inform the detailed design plan required to be submitted and approved pursuant to condition 11(1)(a) of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5)).</p> <p>The Applicant can confirm that all potential reef habitat for the purpose of characterisation were identified through the site-specific geophysical and subsequent ground-truthing DDV surveys as detailed within Appendix 9.3: Rampion 2 Offshore wind farm subtidal benthic characterisation survey report, Volume 4 of the Environmental Statement [APP-137]. The same process will be undertaken during the pre-construction survey campaign as detailed within the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), so the full extent of all areas of reef (biogenic and geogenic) are understood to inform requirements for micro-siting.</p>

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F27	<p>mapped as part of the pre-construction survey to information micro-siting and this should form part of the IPMP. We advise that this work is key to informing the micro-siting of the cable route to avoid these features and is in line with what occurred for Rampion 1.</p> <p>Natural England advises that habitat loss or disturbance during construction should not be contextualised in relation to habitat availability in the wider area, particularly where it is protected under Section 41. Where the cable is installed through chalk, this represents a permanent loss of irreplaceable habitat listed as a Habitat of Principle Importance as under section 41 of the Natural Environmental and Rural Communities (NERC) Act 2006, which both the developer as a statutory undertaker and the regulator have a duty to protect. We understand that it is currently thought a mechanical trencher</p>		No change		No change		Please see our response to BP 1.10 in Appendix N3 of our deadline 3 submission (REP3-086). We note that any commitment in relation to infilling the cable trench with the excavated chalk would need to be secured. Our advice remains unchanged on the other aspects of this point.		<p>As detailed within the Applicant's Responses to Relevant Representations [REP1-017], the assessment of permanent habitat loss is presented in Section 9 of Chapter 9: Benthic, subtidal and intertidal ecology, Volume 2 of the Environmental Statement [REP4-018], with the sensitivity of chalk afforded a 'high' sensitivity category within the assessment as a result of its protected status.</p> <p>Recognising that due to the widespread nature of chalk in the region, often as underlying geology beneath surficial sediment cover, not all chalk can be avoided, the Applicant has provided its approach to minimising permanent loss of chalk within the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), which includes the use of specialist equipment to minimise impact footprints in areas where full avoidance is not possible. The development of the mitigation, which will be provided in the final mitigation Plan and will incorporate detailed information from the pre-construction surveys, forms an important component of the approach to ensuring the 'minor' magnitude impact assigned to chalk receptors is appropriate. The final Plan will</p>

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	<p>may be required over 54% if the route, which has the potential to cause wider damage to chalk compared to some of the other trenching methods mentioned. Therefore, the magnitude of impact should be Major/Moderate. We advise the mitigation measures are amended to allow for more detailed consideration particularly measure C-272. Natural England should be consulted on the Cable Burial Risk Reporting and the Outline Cable Specification and Installation Plan at the consenting stage. Within these, we would expect to see evidence that the commitments proposed have been adhered to and the loss of chalk minimised as far as possible. We disagree that the current information on the mitigation measures provided allows the reduction of the magnitude of impact to Negligible. Natural England advises that monitoring of the of the cable route through</p>								<p>be submitted to and approved in writing by the MMO, as secured in Condition 11(1)(k) of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5)), alongside the Cable Specification and Installation Plan, Condition 11(1)(n) of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5)), both of which will draw upon the cable burial risk assessment (secured in Condition 11(1)(n) of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5))).</p> <p>Note, the Applicant is submitting an Outline Cable Burial Risk Assessment (Document Reference: 8.85) and Outline Cable Specification and Installation Plan (Document Reference: 8.88) at Deadline 5, in response to Action Point 19 of the Action Points arising from ISH 2 [EV5-018].</p> <p>The Offshore In Principle Monitoring Plan [REP4-055] (as secured in Condition 11(1)(j) of the dMLs Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5)) presents details of the monitoring proposals. A Final Monitoring Plan will be submitted in accordance with this Condition.</p> <p>The Applicant confirms that trench cutting on the seafloor using a mechanical cutter would be able to deposit the majority of the cuttings back into the trench, however this process will obviously be influenced by the characteristics of the chalk rock itself.</p> <p>Furthermore, the Applicant confirms that no chalk material arising from the export cable corridor area will be transported from that area for subsequent</p>

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	chalk will be required and that this should be considered in the monitoring plan. We advise the magnitude is amended to reflect permanent loss of irreplaceable chalk, and that there is a clear commitment to how evidence will be provided to show the mitigation measures have been adhered to. Natural England advises that further consideration is required in relation where trenched chalk will be deposited. Ideally it would infill any trench as a form of cable burial protection (rather than impacting on other habitats) decreasing the need for further external cable protection. However, it should be noted that because the structure of the chalk will be irreparable will still be classed as a permanent impact.								disposal within the array area. On this basis, the Applicant does not consider there to be a need for an additional condition within the dML. Additionally, in response to the request from Natural England, the Applicant has included the following commitment in the Commitments Register [REP4-057] (updated at deadline 5) "C-305 – Excavated chalk will be used to infill cable trenches produced by mechanical cutters, where practicable". Commitment C-305 is included within the Outline Cable Specification and Installation Plan (Document reference 8.88), secured within Condition 11(1)(n) of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5).
F28	While the same advice applies for any loss of cobble reef, Sabellaria spinulosa, peat and clay exposures, and bream nests etc. (as the environmental		No change		No change		We note the Applicants response to written question BP 1.11. We support the seasonal restriction on works in the cable corridor, which prevents direct impacts		As detailed within the Applicant's Responses to Relevant Representations [REP1-017] , the Offshore In Principle Monitoring Plan [REP4-055] (updated at Deadline 5) (as secured in Condition 11(1)(j) of the dMLs Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5)) presents

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	<p>conditions may no longer be suitable where they had potentially been before), we understand that in the first instance the intention will be to avoid these habitats, whereas not all chalk can be avoided. We advise that, should micro-siting not be possible, then recovery will need to be robustly demonstrated in the monitoring. The assessment should assume the worst-case scenario that these features cannot be avoided. The assessment in relation to Sabellaria spinulosa refers to recovery within two to ten years, but this does not consider if the underlying habitat has been lost or changed, and therefore Sabellaria spinulosa cannot recover in such locations. We advise this will require monitoring to demonstrate recovery. We advise that the Applicant further considers the magnitude of impact and sensitivity with regards to these features, and that monitoring of</p>						<p>on black seabream during the sensitive season (March to July). We advise that C-273 should be updated to make it clear this includes all work within the cable corridor (including preparations and UXO clearance). However, it should be noted that there may still be impacts on the underlying habitats that support bream nesting should they not be able to be micro-sited around. We advise that monitoring of these underlying habitats is required to ensure they are able to recover and are still suitable for nesting. Our advice unchanged on this point.</p>		<p>details of the monitoring proposals. The Applicant notes that monitoring proposals have been based on the identification of significant effects within the EIA.</p> <p>In line with Natural England's request, commitment C-273 has been updated as follows "A seasonal restriction will be put in place to ensure Offshore Export Cable Corridor activities (including: construction and installation, preparatory works during cable installation, UXO clearance, preventive or scheduled maintenance, inspections and decommissioning) are undertaken outside the black seabream breeding period (1st March- 31st July inclusive) to avoid any effects from installation works on black seabream nesting within or outside of the Kingmere MCZ. This does not apply to emergency work required to maintain the operation, safety and integrity of the infrastructure." Commitment C-273 has been updated in the commitments register and the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5) secured in Condition 11(1)(k) of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5).</p> <p>It should be noted that the requirement for post-construction monitoring will be dependent on the findings of the pre-construction surveys. As detailed within the Offshore In Principle Monitoring Plan [REP4-055] (updated at Deadline 5), if post-construction monitoring is required, survey programmes and methodologies for the purposes of monitoring shall be submitted to the MMO for written approval at least four months prior to the commencement of any survey works and conducted within the first-year post commissioning of the proposed wind farm. If significant impacts are observed the potential requirement for further</p>

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F29	<p>recoverability is included in the IPMP.</p> <p>We do not agree with the methodology of contextualising the magnitude of impact from long-term habitat loss, with it being 0.6% of the proposed DCO. This is an oversimplistic assessment, given that habitats are present in different proportions within the boundary. We do not consider any loss of biotopes representing subtidal chalk, <i>Sabellaria spinulosa</i>, stoney reef, peat and clay exposures, or bream nests as Negligible in magnitude. Based on the definitions in Table 9.18, permanent loss is either Major or Moderate magnitude, and therefore at a minimum the magnitude here needs to be Moderate, as opposed to Negligible which suggest no sensitivity of the receptor to this change. Natural England also does not agree with the concept that changing the habitat is a beneficial effect, as it represents a change</p>		No change		No change		No change		<p>surveys will be agreed with the MMO following review of the post-construction survey data.</p> <p>As detailed within the Applicant's Responses to Relevant Representations [REP1-017], the consideration of total habitat loss presented within paragraph 9.10.2 of Chapter 9: Benthic, subtidal and intertidal ecology, Volume 2 of the Environmental Statement [REP4-018] represents an overall (total) percentage loss across all habitats within the proposed Order Limits to provide an overall context of impact magnitude as a result of the total area subject to the installation of infrastructure. The sensitivity of the habitats within the area have subsequently been considered in paragraphs 9.10.4 <i>et seq.</i>, in order to provide the effect significance finding. The location of specific infrastructure within the proposed Order Limits is not yet known and it should be noted that project design will also be subject to mitigations through avoidance of sensitive features, where practicable, as informed by pre-construction surveys and micro-siting pursuant to Conditions 11 and 16 of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5).</p> <p>The Applicant also clarifies that no account of any potentially beneficial impacts arising from a change in habitat type as a result of the introduction of infrastructure is taken within the assessment.</p>

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F30	<p>from natural habitat to a habitat type that is not natural in this area. We advise that the assessment is revised by the Applicant to account for this.</p> <p>We advise that in addition to underwater noise from UXO clearance, the potential for this activity to physically damage the priority habitats, designated site features and seabream nests outside of the MCZ also needs to be considered. Natural England advises that the Applicant needs to consider the potential impacts from UXO detonation on benthic habitats and/or mitigation measures for making the UXO safe without impacting on benthic habitats.</p>		No change		No change		No change		As detailed within the Applicant's Responses to Relevant Representations [REP1-017] , the Applicant is not seeking UXO clearance consent at this stage. Should UXO be identified within the Proposed Development area that require removal for safety reasons, a separate Marine Licence will be applied for at that stage, when details of the number, location(s) and size(s) of the UXO are better understood. This will include assessment of the potential for seabed disturbance and effects on proximal sensitive habitats, as relevant and appropriate. The Applicant has included a Commitment (C-275 of the Commitments Register [REP4-057] (updated at Deadline 5)), to the use of low order techniques as the primary method for detonation (where required), which is secured within the Draft Unexploded Ordnance Clearance Marine Mammal Mitigation Protocol [APP-237] (updated at Deadline 5), noting that relevant controls would be expected to be secured within the UXO clearance Marine Licence as noted above.
F31	<p>We advise that in relation to 'Temporary habitat disturbance from jack-up vessels and cable maintenance works', indirect impacts on Kingmere MCZ and Offshore Overfalls MCZ should be considered. We advise that the</p>		No change		No change		No change		As detailed within the Applicant's Responses to Relevant Representations [REP1-017] , the assessment presented in Chapter 9: Benthic Subtidal and Intertidal Ecology, Volume 2 of the Environmental Statement (ES) [REP4-018] includes consideration of the potential for indirect effects (SSC and deposition) on the MCZs as a result of operations and maintenance activities at the Proposed Development, as detailed in paragraphs 9.10 6 to 9.10.12 of Chapter 9:

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	<p>Applicant will need to demonstrate how ongoing works will continue to microsite around sensitive features, and that this will require ongoing data collection where there is biogenic reef. Natural England advises that monitoring will be required to inform recovery of benthic habitats from construction and the 5 yearly review of the Operations and Maintenance plan, which is yet to be agreed. We will work with the Marine Management Organisation (MMO) to secure adequate monitoring conditions.</p>								<p>Benthic Subtidal and Intertidal Ecology, Volume 2 of the ES [REP4-018] (updated at Deadline 5), making reference to the assessment presented for the same impacts arising from construction. Where micrositing has been required during construction, the Applicant asserts that the measure would be anticipated to provide protection for maintenance at the same infrastructure locations as they will have been placed in a position that protects key sensitive features. In addition, the Applicant has included planned operations and maintenance works within its Commitment C-273 to restrict such works to periods outside the black seabream breeding season to avoid impacts to this feature of the Kingmere MCZ. This Commitment is included within the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5), which is secured in Condition 11(1)(k) of the dMLs (Schedules 11 and 12 of the draft DCO [REP4-004] (updated at Deadline 5). For operations and maintenance works required in areas where the presence of <i>S. spinulosa</i> reef has been recorded in the pre-construction surveys (and therefore a risk of the development of such ephemeral features exists), focused survey for the presence of <i>S. spinulosa</i> reef will be undertaken ahead of such works if data less than 2 years old are not available</p> <p>Furthermore, the Offshore In Principle Monitoring Plan [REP4-055] (updated at Deadline 5), details the plan for post-construction. It should be noted that the requirement for post-construction monitoring will be dependent on the findings of the pre-construction surveys. As detailed within Offshore In Principle Monitoring Plan [REP4-055] (updated at Deadline 5), if post-construction monitoring is required survey programmes and methodologies for the purposes of monitoring shall be submitted to the MMO for written approval at</p>

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F32	Natural England advises that further explanation is provided here as to how these mitigation measures will be applied to cable repair works during the operational period. We do not agree with the reduction to negligible here, as it is unclear that measures such as installation techniques would carry over to the operational works. We advise further information is provided by the Applicant to demonstrate how the mitigation measures would be applicable to the operation and maintenance phase.		No change		No change		No change		<p>least four months prior to the commencement of any survey works and conducted within the first-year post commissioning of the proposed wind farm. If significant impacts are observed the potential requirement for further surveys will be agreed with the MMO following review of the post-construction survey data</p> <p>As detailed within the Applicant's Responses to Relevant Representations [REP1-017], the Applicant has updated commitments C-272 and C-273 to include reference to the operation phase of the Proposed Development.</p> <p>C-272: Adoption of specialist offshore export cable laying and installation techniques will minimise the direct and indirect (secondary) seabed disturbance footprint to reduce impacts, which will provide mitigation of impacts to all seabed habitats, but particularly chalk and reef areas as well as potential (unknown) black seabream nesting locations, where avoidance is not possible. The Applicant will seek to utilise the most appropriate technology available at the time of construction and during operation, if required, to reduce the direct footprint impact from cutting machinery, where practicable.</p> <p>C-273: A seasonal restriction will be put in place to ensure Offshore Export Cable Corridor activities (including: construction and installation, preparatory works during cable installation, UXO clearance, preventive or scheduled maintenance, inspections and decommissioning) are undertaken outside the black seabream breeding period (1st March- 31st July inclusive) to avoid any effects from installation works on black seabream nesting within or outside of the Kingmere MCZ. This does not apply to emergency work required to maintain the operation, safety and integrity of the infrastructure.</p>

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F33	Natural England previously requested illustrative plume modelling to understand the impact ranges presented in the Table, in relation to impacts on surrounding designated sites. Whilst we note that the Applicant has attempted to address this with the provision of Figure 2.3 in Appendix 6.3, the 50m buffer on this is not discernible, and the 500m buffer is unclear. It also does not specifically demonstrate depth contours within the adjacent designated sites (Kingmere MCZ and Offshore Overfalls MCZ). We seek clarification that, given the volume of underlying chalk substrate, chalk has been considered specifically in the plume modelling. Natural England is aware that persistent chalk plumes were visible as part of the Rampion 1		No change		No change		No change		<p>This has been added to the In Principle Monitoring Plan [REP4-055] at Deadline 5, the delivery of which is secured in Condition 11(1)(j) of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5)).</p> <p>As detailed within Chapter 6: Coastal processes, Volume 2 of the Environmental Statement (ES)[APP-047] fine sediment may persist in suspension for longer than sands (order of days) but the plume will be subject to significant dispersion in that time, reducing any change to SSC to tens of mg/l or less in the same timeframe. As a result of dispersion, no measurable thickness of deposit or accumulation of fine sediment is expected. Chapter 9: Benthic, subtidal and intertidal ecology, Volume 2 of the ES [APP-050] (updated at Deadline 5), gives due consideration of the characterising biotopes to increased SSC and sediment deposition.</p> <p>It is noted that the underlying chalk is exposed extensively along this coastline. Chalk might be put into suspension as anything from a fluid mud/fine suspension to big chunks, and/or anything in-between (depending on the geotechnical properties of the chalk locally, and the method and tool used to disturb it). The density of chalk is not dissimilar to other sediments in this context and so the behaviour of a plume would be broadly similar.</p> <p>The outputs presented within the ES (SSC and thickness of deposition) therefore equally apply to all grainsizes of chalk. Furthermore, loose chalk boulders (and likely smaller pieces) are commonly observed on the beach and seabed. The introduction of an additional relatively small volume of chalk clasts (especially following a reasonably short period of reworking, e.g. one large storm)</p>

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	<p>construction, and therefore advises that it is important that this has been specifically considered as part of Rampion 2. We advise that a clearer figure is provided by the Applicant in an updated chapter, and that further consideration is given to this matter in line with our comments on marine processes, so that the impacts on benthic features of designated sites can be clearly and fully understood. We advise that detail is added to the reporting to demonstrate chalk plumes have been considered, based on lesson learnt from plumes that occurred during Rampion 1's construction. Monitoring of chalk plumes should be included within the IPMP.</p>								<p>would not noticeably change the seabed in this area</p> <p>Figure 2.3 of Appendix 6.3: Coastal processes technical report impact assessment, Volume 4 of the ES [APP-131] has been updated at Deadline 5 so that the buffers are clearer.</p>
F34	<p>In addition to considering cable laying techniques that minimise the footprint, consideration should also be given to reducing suspended sediment, and maximising</p>		No change		No change		No change		<p>As detailed within the Applicant's Responses to Relevant Representations [REP1-017], the Applicant has stated that consideration will be given to reducing suspended sediment, and maximising recovery/avoiding persistent trenches in the Cable Specification and Installation Plan. An Outline Cable Specification and Installation Plan was submitted at Deadline 5 (Document reference 8.88), the final plan will be submitted to</p>

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	recovery/avoiding persistent trenches. We advise cable installation techniques that minimise suspended sediments, and therefore secondary impacts on Kingmere MCZ, are considered. We advise this is considered further by the Applicant within the assessment (particularly the MCZ Assessment and as part of the Outline Cable Specification and Installation plan.								and approved in writing by the MMO, as secured in Condition 11(1)(n) of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5)). Commitment C-272, includes minimising the direct and indirect (secondary) seabed disturbance footprint to reduce impacts during the construction and operational phase of the Proposed Development: <i>'C-272 - Adoption of specialist offshore export cable laying and installation techniques will minimise the direct and indirect (secondary) seabed disturbance footprint to reduce impacts, which will provide mitigation of impacts to all seabed habitats, but particularly chalk and reef areas as well as potential (unknown) black seabream nesting locations, where avoidance is not possible. The Applicant will seek to utilise the most appropriate technology available at the time of construction and during operation, if required, to reduce the direct footprint impact from cutting machinery, where practicable.'</i>
F35	As previously highlighted to the Applicant Natural England highlights that plume modelling for Rampion 1 may no longer be appropriate for Rampion 2 due to progression of sustainable development in the convening time e.g. construction of Rampion 1 and changes to the aggregate's licenses. Natural England advises		No change		No change		No change		As detailed within the Applicant's Responses to Relevant Representations [REP1-017] , the Applicant can confirm that (spreadsheet based) modelling for the Rampion 2 assessments for a range of different activities causing sediment disturbance, including up-to-date aggregates licensing (the nature of plumes arising from aggregate dredging was not explicitly modelled, but for the purpose of this assessment is considered the same as or similar to that modelled for dredging for seabed preparation in the array area), was undertaken as detailed within Chapter 6: Coastal processes, Volume 2 of the Environmental Statement[APP-047], Section 6.8 Methodology for ES assessment - Assessment of potential changes to suspended sediment

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	that robust justification should be provided as to why this is still applicable. We advise this justification is provided by the Applicant as part of the consenting phase. Natural England advises that any modelling conducted in 2012 needs to be validated to consider the Rampion 2 proposals (which are closer to the aggregates sites) and would need to take into account the current aggregates licences. We advise this evidence is provided by the Applicant to inform the cumulative impact assessment and the ES updated accordingly.								concentration and seabed deposition. The results are described as consistent with previous plume modelling for Rampion 1 (and other OWFs) but are not directly reliant on them.
F36	Natural England notes that the wording of the activity of impact line two in Table 9.8 should be clarified. We advise the wording is amended to recognise that temporary increase in SSC and sediment deposition is an issue for as far as the plume extends, and not just within the DCO limits. We advise this wording is amended by the Applicant and informs		No change		No change		No change		As detailed within the Applicant's Responses to Relevant Representations [REP1-017], the Applicant can confirm that indirect impacts outside the DCO Limits have been fully assessed, and the table is incorrect. As stated within section 9.4, Chapter 9: Benthic, subtidal and intertidal ecology, Volume 2 of the Environmental Statement (ES)[REP4-018] (updated at Deadline 5) indirect impacts from SSC and deposition were undertaken for the wider benthic study area which includes a 16 km buffer surrounding the array area and offshore export cable corridor in order to include the 16 km maximum sediment plume distance during spring tides. This is clear within the Chapter.

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F37	<p>the monitoring requirements within the IPMP.</p> <p>We note that habitat disturbance during the operation and maintenance phase is prefaced by the word 'temporary'. We advise that it should not be assumed that this impact would be temporary. We advise that it is also possible that cable maintenance activities could lead to temporary increase in SSC and sediment deposition. We advise this wording is amended, and that the full range of relevant impacts are assessed.</p>	No change		No change		No change		No change	<p>Table 9-8 has been updated in accordance with advice from Natural England in Chapter 9: Benthic, subtidal and intertidal ecology, Volume 2 of the ES [REP4-018] (updated at Deadline 5).</p> <p>As detailed within the Applicant's Responses to Relevant Representations [REP1-017], the Applicant can confirm that the assessment considered the impact to biotopes from increases in SSC and deposition within the operation and maintenance phase. The impact to be assessed was agreed throughout the scoping and consultation process.</p> <p>The word "temporary" has been removed from the impact assessment from the O&M phase, Chapter 9: Benthic, subtidal and intertidal ecology, Volume 2 of the Environmental Statement [REP4-018] (updated at Deadline 5).</p>
F38	<p>We acknowledge the description that <i>'Drilling mud noted as persisting and very high levels of suspended sediments expected around export cable route'</i>. We seek clarification that this has been considered in the plume modelling. The text suggests that the release of drilling mud has the potential to persist in suspension for</p>		No change		No change		No change		<p>As detailed within the Applicant's Responses to Relevant Representations [REP1-017], drilling mud might be released in the offshore ECC as part of HDD at the landfall. Any drilling mud that is put into suspension would behave similarly to any other fine sediment in suspension (as already described for plumes generally). Plumes associated with HDD could be advected up to the tidal excursion distance in timescales of hours. Beyond this time, the concentration of these plumes is expected to become progressively dispersed and the level of SSC will fall to levels within the range of natural variability and therefore the definition of negligible <i>'the receptor is not</i></p>

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	days or longer. We advise this timeframe is not consistent with a negligible magnitude. We advise clarification is provided by the Applicant and consideration is given to updating the magnitude with an updated ES chapter.								<i>vulnerable to impacts regardless of value/ importance'</i> is considered accurate. The magnitude of this impact will therefore not be re-assessed, and the Applicant considers the assessment to be robust and accurate.
F39	Natural England disagrees that the impacts within the 500m buffer, where they affect the MCZs, can be determined to be Minor. The impact on features within this area should not be contextualised as being small within the context of the whole of the MCZs. We advise more detailed consideration is required in relation to impacts on the features specifically within this area of impact. We disagree with the overall magnitude of impact being Minor. We advise that further consideration is given by the Applicant to impacts on the specific features of Kingmere and Offshore Overfalls MCZs within the ES.		No change		No change		No change		As detailed within the Applicant's Responses to Relevant Representations [REP1-017] , the assessment presented within Chapter 9: Benthic subtidal and intertidal ecology, Volume 2 of the Environmental Statement (ES) [REP4-018] (updated at Deadline 5), sets out the potential impact magnitudes based on the physical processes assessment, which identifies limited impacts due to suspended sediment concentrations (SSC) and subsequent deposition over areas at 50 m to 500 m distance from the location of the construction activity on a worst-case basis, noting this includes an assumption that works are conducted on the boundary of the Order Limits itself, closest to the MCZs. As illustrated in Figure 6.3.4 of Appendix 6.3: Coastal processes technical report: Impact assessment, Volume 4 of the ES [APP-131] (updated at Deadline 5), even with this assumption, the only anticipated overlap to a discrete area on the northern boundary of the Offshore Overfalls MCZ and the western boundary of the Kingmere MCZ. SSC and subsequent deposition in these areas is assessed as being low level and short-term, with characterising habitats noted as naturally subject to a degree of sedimentation and scour and characterising species are therefore likely to tolerate intermittent episodes of sediment movement and deposition.

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F43	Natural England seeks clarification on whether habitats protected under the NERC Act/ Habitats of Principal Importance/Annex I identified in the intertidal area will be entirely avoided due to the use of HDD. We note that Climping Beach SSSI and Worthing Lumps Local Wildlife Site (LWS) will be subject to mitigation measure C-43, and so there will be no direct impacts on these sites. We seek clarification on whether access to these areas by works vehicles or equipment will be required. We advise clarity is provided on this point by the Applicant, to provided confidence in the commitment to fully avoid direct impacts on the SSSI and that priority habitats will be avoided in the intertidal area. If there is any reason why this might not be possible, this should be presented upfront as a worst-case scenario. We note that the full viability and		The Applicant has provided further information, which we have provided comments on in Appendix DF 2. Our comments remain unchanged on this issue.		No change		Natural England understands that the Applicant intends to submit further information on this point at deadline 4. We will review this and provide further advice as required.		<p>The Applicant considers the assessment presented to be robust and adequate.</p> <p>As detailed within the Applicant's Responses to Relevant Representations [REP1-017], the Applicant can confirm that all such habitats will be avoided in the intertidal area and draws attention to the following:</p> <p>Commitment C-43 of the Commitments Register [REP4-057] (updated at Deadline 5): The subsea export cable ducts will be drilled underneath the beach using horizontal directional drilling (HDD) techniques.</p> <p>As noted in Table 9-6 of Chapter 9: Benthic Subtidal and Intertidal Ecology, Volume 2 of the Environmental Statement (ES) [REP4-018] (updated at Deadline 5): The onshore landfall proposed DCO Order Limits overlaps with Climping SSSI. However, this is to allow for an area of HDD works, which will be underneath the intertidal area. It will not be on the surface of the beach. The overlap with the proposed DCO Order Limits has not been removed, to allow space for the HDD. Potential indirect effects to features have been assessed within Section 9.9 of Chapter 9: Benthic, subtidal and intertidal ecology, Volume 2 of the ES [REP4-018] (updated at Deadline 5).</p> <p>The Applicant can confirm that there will be no direct impacts to the Climping Beach SSSI and Worthing Lumps Local Wildlife Site (LWS). Access to these areas by works vehicles or equipment will not be required, as set out within the Outline Construction Method Statement [APP-255] (updated at Deadline 5) and secured in Schedule 1, Part 3 Requirement 23 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5).</p>

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	<p>extent of Horizontal Directional Drilling (HDD) is yet to be confirmed. We advise geotechnical data is collected and presented to support this.</p>								<p>Additionally, as detailed within the Applicant's Response to Deadline 2 Submission [REP3-052] Horizontal Directional Drill (HDD) at the landfall site has been proposed to minimise risk to the integrity of the embankment as noted in embedded environmental measure C-43 in the Commitments Register [REP4-057] (updated at Deadline 5) secured via Draft Development Consent Order [REP4-004] (updated at Deadline 5), Schedule 12, Part 2, Condition 2 (8) which states "The cables comprising Work Nos. 5 are to emerge in HDD exit pits and be laid on or beneath the seabed or in ducts laid on or beneath the seabed". The outcome of the ground investigation as outlined in commitment C-247 (Commitments Register [REP4-057] (updated at Deadline 5)) will inform the exact siting and detailed design of the drilling works, which will be undertaken post-consent. Environmental measure C-17 in the Commitments Register [REP4-057] (updated at Deadline 5) is also included to ensure adherence to the permitting regime which will cover any temporary construction activities in close proximity to the Environment Agency flood defence. The permits will be obtained in accordance with The Environmental Permitting (England and Wales) Regulations 2016.</p> <p>Chapter 6: Coastal processes, Volume 2 of the ES [APP-047] concludes that construction and operation and maintenance activities will not significantly impact coastal morphology and offshore sediment transport and therefore the Proposed Development will not increase the risk of coastal erosion. Following Issue Specific Hearing 1 (ISH1), the Applicant has provided further information in request to Action Point 7 to provide more detail on HDD at Climping Beach, see Appendix 11 – Further information for Action Point 7, Applicant's Response to Action Points</p>

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F44	It is in this section it is stated that ' <i>RED will undertake pre-construction surveys to determine the exact amount of clearance required prior to construction within the array area and the offshore export cable corridor. Micro-sitting</i>		No change		No change		No change		<p>Arising from Issue Specific Hearing 1 [REP1-018].</p> <p>On the basis of the assessment undertaken within Chapter 6: Coastal processes, Volume 2 of the ES [APP-047] and commitment C-247 (Commitments Register [REP4-057] (updated at Deadline 5)) which is secured via Requirement 26 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5), the coastal vulnerability of the Proposed Development is considered to be low, for which further mitigation will be identified and implemented post-granting of DCO consent as necessary.</p> <p>Following construction completion, the land above the cables will be available for habitat creation. Although certain types of habitat creation would be prohibited (e.g. anything requiring digging above the cables) there is a plethora of habitats that could be created including coastal and floodplain grazing marsh, marshy grassland, hedgerows and scrub.</p> <p>The Applicant has previously provided responses to the ExA Questions regarding climate resilience considerations at landfall, please see References FR 1.1 and CC 1.2 in in Deadline 3 submission – 8.54 Applicant's Responses to Examining Authority's First Written Questions [REP3-051].</p> <p>As detailed within the Applicant's Responses to Relevant Representations [REP1-017], the Applicant will indeed undertake pre-construction surveys to determine the exact amount of clearance required prior to construction within the array area and the offshore export cable corridor and micro-sitting around boulders will be considered where appropriate. Where necessary, the Applicant proposes to use a plough to remove boulders, which will move boulders to adjacent areas of seabed and within the same habitat type. No</p>

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	<p><i>around boulders will be considered where appropriate. Furthermore, RED propose to use a plough to remove boulders'. We advise that there is no specific commitment to this, and that consideration should be given to placing boulders on similar habitats, and not on any of the habitats listed above. We advise this is considered further by the Applicant and included in the Outline Cable Specification and Installation plan.</i></p>								<p>boulders will be removed and placed on priority sensitive habitat areas to ensure no impacts from boulder placement will arise on such receptors. Appendix 9.5: Technical Note Cable Corridor area mitigation for sensitive features, Volume 4 of the Environmental Statement[APP-145] exemplifies how the micrositing exercise will be conducted based on data from the pre-construction surveys, with final details to be provided within the Final Cable Specification and Installation Plan, secured in Condition 11(1)(n) of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5)).</p>
F45	<p>Natural England has concerns regarding the statement that 'material excavated from HDD exit pits might also be temporarily stored within the offshore array area or export cable corridor, if and where designated as a spoil disposal area'. We disagree with the wording that measure C279 will be of 'direct benefit to benthic habitats'. Instead, this is about minimising impact. We advise that with any disposal locations, the Applicant would need to consider</p>		No change		No change		No change		<p>As detailed within the Applicant's Responses to Relevant Representations [REP1-017], the Applicant notes this comment from Natural England and, whilst the wording identified the benefit delivered by the measure, was in relation to minimising and managing impacts, the Applicant agrees that the measure is related to minimising impacts rather than providing a direct benefit to benthic habitats. All relevant potential impacts arising from the deposition of spoil material arising from the Proposed Development have been assessed within Chapter 9: Benthic, subtidal and intertidal ecology, Volume 2 of the ES [REP4-018] (updated at Deadline 5), paragraph 9.9.17 et seq., which details that the magnitude is minor from an impact of this nature due to the short-term, intermittent and relatively localised extent. The Applicant also notes that provision for the temporary storage of material has been made within the Outline Cable Specification and</p>

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	<p>potential impacts on the designated sites, avoiding locations of sensitive features and consider placement of material on similar sediment types. Natural England has particular concerns about material being stored in proximity to bream nesting habitats. Additionally, we question if the Applicant considers that they will be able to retrieve this material successfully, particularly if it were chalk. We would expect to see monitoring included in relation to any disposal locations within the DCO boundary. We advise this is further considered by the Applicant in the Outline cable specification and installation plan, and Natural England is consulted on a final plan. Monitoring to ensure that the disposal impacts whereas predicted e.g. did not impact negatively on designated site features and/or supporting habitats should be included within the IPMP.</p>								<p>Installation Plan (Document reference 8.88), which is secured in Condition 11(1)(n) of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5)), which sets out that once pre-construction surveys have been completed, and the locations of sensitive features have been determined, consideration will be given during the detailed design to identify suitable locations for the temporary storage of material, in areas which minimise impacts on sensitive features and designated sites, where practicable.</p>

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F53	Natural England notes that EIA terminology and methodology to assess impacts are being applied throughout the MCZ Assessment. For clarity, the MCZ Assessment should seek to define and understand the potential of the conservation objectives being hindered by external activities/impacts. We advise that, to avoid confusion, the MCZ Assessment should not use EIA terminology. Additionally, we note that our comments within the thematic chapters regarding significance of effect and magnitude also apply to this assessment, where the Applicant has brought forward these conclusions to the MCZ Assessment. We advise that the MCZ assessment should be amended to reflect our comment. Otherwise, agreements cannot be reached on the conclusions drawn.		No change		No change		No change		As detailed within the Applicant's Responses to Relevant Representations [REP1-017] , the Applicant considers it has appropriately applied the assessment outcomes from the EIA relating to potential impacts arising on MCZ features, or relevant components of those features, before providing a concluding statement on the potential for hindrance of the Conservation Objectives for each feature within the Draft Marine Conservation Zone Assessment [APP-040] . In regard to the comments on determination of impact magnitude and significance of effect, the Applicant has responded to each item raised by Natural England in its Relevant Representation (see responses to F8, F9, F15, F27, F29, F35 and F36 above). The Applicant considers the assessment presented within the ES to be robust and appropriate, and on this basis is not intending to change its findings.
F54	We note that indirect impacts that were assigned a 'Negligible'		No change		No change		No change		As detailed within the Applicant's Responses to Relevant Representations [REP1-017] and as noted above in response to F53, the Applicant

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	magnitude in the ES EIA have been screened out, and not taken to Stage 1 Assessment. We advise that our comments on the relevant chapters are taken into account and the screening is adjusted as necessary. We advise that our comments on the relevant thematic chapters are considered against any decisions made in the MCZ Assessment and potential impact pathways that could hinder the conservation objectives for the site assessed.								considers the assessment presented within the MCZ assessment to be robust and appropriate.
F55	Natural England advises that where impacts have been screened out due to insignificant effects on coastal and marine processes, our outstanding comments on benthic chapter should be taken into account. Natural England advises that the Applicant considers our comments on coastal and marine processes and the assessment updated as necessary noting that there may be		No change		No change		No change		See response above, F54 .

Point	Taken from Natural England's Relevant and Written Representations Rampion 2 Appendix F - Benthic, Subtidal and Intertidal Ecology [RR-265]	RAG Status Rel and WR Rep D1	Consultation, actions, progression	RAG Status at D2	Consultation, actions, progression	RAG Status at D3	Consultation, actions, progression	RAG Status at D4	Applicant's Response
F56	<p>residual benthic impact pathways.</p> <p>We advise that the sensitivity of both moderate energy infralittoral rock and thin mixed sediments, and subtidal chalk (a feature of Kingmere MCZ) in relation to marine INNS, is a worst-case scenario within Natural England's advice on operations. Therefore, we advise this is assessed as High. We advise that the sensitivity is revised to High by the Applicant in an updated assessment and mitigation measures adopted accordingly.</p>		No change		No change		No change		As detailed within the Applicant's Responses to Relevant Representations [REP1-017] , the Applicant has reviewed the sensitivity ascribed to these features within both the Draft Marine Conservation Zone Assessment [APP-040] and Chapter 9: Benthic, subtidal and intertidal ecology, Volume 2 of the Environmental Statement (ES) [REP4-018] (updated at Deadline 5), and notes that whilst the relevant components of the features considered in the MCZ assessment were given a medium sensitivity, as supported by the ecology of the characteristic species, the wider habitats were afforded a precautionary 'high' sensitivity within Chapter 9: Benthic, subtidal and intertidal ecology, Volume 2 of the ES [REP4-018] (updated at Deadline 5). In either case, whether a high or medium sensitivity is ascribed, the assessment outcome remains the same for the negligible impact magnitude. As such the Applicant is confident that the assessment outcome reported within the MCZ assessment is appropriate.
F59	<p>We advise that to understand the likely effectiveness of the mitigation measures proposed, geotechnical data is provided at the consenting stage to inform a Cable Burial Risk Assessment (CBRA), and outline Cable Specification and Installation Plan (CSIP) that both clearly take into account lessons learnt from Rampion 1.</p>		The Applicant has provided further information, we have provided comments in Appendix DF 2. Our comments remain unchanged on this issue and we advise		No change		Our advice remains unchanged from what was set out in our Appendix DF2 (REP2-038).		<p>The Applicant is submitting an Outline Cable Burial Risk Assessment (Document Reference: 8.85) and Outline Cable Specification and Installation Plan (Document Reference: 8.88) at Deadline 5, in response to Action Point 19 of the Action Points arising from ISH 2 [EV5-018].</p> <p>The Final Cable Specification and Installation Plan will be refined on the basis of the additional pre-construction data. Geotechnical information gathered during the pre-construction surveys will inform Cable Burial Risk Assessment. Relevant information from these plans will be shared with Natural England, with the final Plan is to be submitted to and approved in writing by the MMO,</p>

Point	Taken from Natural England's Relevant and Written Representations Rampion 2 Appendix F - Benthic, Subtidal and Intertidal Ecology [RR-265]	RAG Status Rel and WR Rep D1	Consultation, actions, progression	RAG Status at D2	Consultation, actions, progression	RAG Status at D3	Consultation, actions, progression	RAG Status at D4	Applicant's Response	
F60	Natural England advises that it is key that all mitigation measures are secured in any consent issued. Natural England has concerns regarding the plan not being finalised until the post-consent/pre-construction phase, and that it is stated the mitigation measures are not confirmed. We advise that where mitigation measures are essential to the assessment, including the MCZ Assessment, we cannot agree to the assessment conclusions without sufficient certainty in the measures being progressed, and the ability to achieve the levels of mitigation required. We support the final plan needing to be signed off by Natural		these plans are provided.		The Applicant has provided further information, which we have provided comments on in Appendix DF 2. Our comments remain unchanged on this issue.		No change		No change	<p>as secured in Condition 11(1)(k) of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5)). As the Applicant has noted in response to reference F1 above, the evidence from the Rampion 1 post-construction reports is not yet available for the Proposed Development to include at this time, due to the reasons set out within that response. The Applicant would note, however, that when the information is publicly available, it will be taken into account in the relevant management plans.</p> <p>As set out in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5) secured in Condition 11(1)(k) of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5), the Applicant highlights that the application of suitable mitigation set out within the plan at this stage need to allow scope for refinement once the final design and construction methods for the Proposed Development have been confirmed. This will enable the most appropriate project related measures to be confirmed, based on best knowledge, evidence and proven technology available at the time of construction. The need to provide scope for refinement arises, in part, due to the range of complex interdependencies common to all offshore wind farms in the early (pre-consent) development stages. These include the selection of specific infrastructure, equipment, and collection and analysis of more detailed site engineering data, which means that design work continues up until the immediate pre-construction period. As a result, it is not possible to provide final detailed method statements for construction prior to consent and the specific detail of required mitigation also cannot be finalised at this stage. In addition, and as discussed through the Evidence Plan Process (EPP) via Expert Topic Group (ETG)</p>

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	England but advise that further information is required to understand the feasibility and effectiveness of mitigation measures through the consenting phase. Natural England advises that there is a risk that mitigation through the mitigation plan may not achieve its aims. We advise that further investigation and information is provided by the Applicant at this stage. We advise that all mitigation measures proposed are secured in the DCO/DML. We advise that further information is required, particularly geotechnical information to inform the Cable Burial Risk Assessment and this is to be updated during the consenting phase.								meetings, further contemporary data acquisition is required to provide confirmation on the location of certain sensitive receptors at the pre-construction stage, notably ephemeral features which require survey data less than 2 years old.
F62	It is suggested that paleochannels will be targeted to maximise successful burial and minimise cable protection. We advise that successful burial in paleochannels is dependent on the depth of sediment and how dynamic the area is. Our understanding is that		No change		No change		No change		As detailed within Appendix 9.4 Geophysical survey (Part 6 of 7), Volume 4 [APP-144] the palaeochannels range from seabed to 27m depth 'below seabed' (BSB) and are layered with sediments. Geotechnical information will be collected after consent award and will be provided to potential cable installers during the tendering for these works. A technical evaluation of the methods proposed by the tendering parties will be undertaken as the start of cable burial risk

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F63	<p>sediments in this area are generally thin. Additionally, we advise that consideration needs to be given to the width of the paleochannels, as there is a possibility that four cables with appropriate separation distances will result in the outside cables being buried on the potentially shallower edges of the channel. Considering both these points, we advise that further geotechnical information is gathered and that a Cable Burial Risk Assessment is provided pre-consent as opposed to post consent, to provide confidence on whether burial in paleochannels is likely to be successful. We advise that a Cable Burial Risk Assessment is provided by the Applicant pre-consent due to the uncertainty of burial in paleochannels being achievable.</p> <p>It is stated that <i>'With regards to trenching and</i></p>		No change		No change		No change		<p>assessment process and used as part of the decision-making process to select the preferred supplier. The aim of the project will be to select a contractor who, with their selected equipment and proposed methods, will be able to bury the subsea cables in accordance with the commitments and the mitigation secured through the dML and minimise the likelihood of future cable exposures. This will help the project avoid having to undertake expensive remediation works. The cable burial risk assessment will be completed by the party contracted to undertake these works during the detailed design stage.</p> <p>The Applicant is aware that paleochannels could be a restriction for the separation distance between the (four) export cables. To accommodate this, the Applicant will consider a reduction of the preferred separation distance between the cables for short distances in order to align the cables with the paleochannels, once the geotechnical data is available and the detail design will be commenced. The Applicant will need to appropriately limit the distance over which such reduction in cable separation is effected due to the requirements of safe maintenance or repair operations.</p> <p>The Applicant is submitting an Outline Cable Burial Risk Assessment (Document Reference: 8.85) and Outline Cable Specification and Installation Plan (Document Reference: 8.88) at Deadline 5, in response to Action Point 19 of the Action Points arising from ISH 2 [EV5-018]. The Final documents will be required to accord with the Outline plans, as secured within Condition 11(1)(n) of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5)).</p> <p>The potential impact to benthic ecology as a result of cable installation activities (including cable</p>

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	<p><i>burial, it is clear from the geophysical survey data for the offshore export cable corridor area that a mechanical trencher is required to achieve burial in chalk areas without sufficient soft sediment cover.' We advise that this should be clearly assessed in the Benthic Ecology Chapter, as this makes some of the mitigation measures proposed for chalk unviable. We would expect to see consideration pre-consent of all options for resolving this issue of cabling through chalk, for example, consideration should be given to be possibility of pinning the cable to the seafloor to minimise the loss of this irreplaceable habitat. We advise that impacts and mitigation success is fully considered by the Applicant in an updated Benthic Chapter.</i></p>								<p>trenching), is described and assessed in Section 9.9 of Chapter 9: Benthic, subtidal and intertidal ecology, Volume 2 of the ES [REP4-018].</p> <p>Geotechnical information will be collected after consent award and will be provided to potential cable installers during the tendering for these works. A technical evaluation of the methods proposed by the tendering parties will be undertaken as the start of cable burial risk assessment process and used as part of the decision-making process to select the preferred supplier to install the cable through the chalk. The aim of the project will be to select a contractor who, with their selected equipment and proposed methods, will be able to bury the subsea cables in accordance with the commitments and the mitigation secured through the dML and minimise the disturbance to chalk and the likelihood of future cable exposures. The Applicant further notes its commitment (C-305), which sets out that excavated chalk will be used to infill cable trenches produced by mechanical cutter, where practicable, as detailed within the Outline Cable Specification and Installation Plan (Document reference 8.88), secured within Condition 11(1)(n) of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5)). The burial of subsea cables in accordance with the commitments and the mitigation secured through the dML to minimise the disturbance to chalk and the likelihood of future cable exposures will help the project avoid having to undertake expensive remediation works. The cable burial risk assessment will be completed by the party contracted to undertake these works during the detailed design stage.</p> <p>The Applicant will explore alternative cable installation methods with a reduced environmental</p>

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F64	In relation to 'the ability of the nearshore trencher to continue on to successfully complete the offshore scope', we advise that a situation may exist where minimising the environmental impacts involves using different techniques for the two areas. This should not be ruled out based on cost. We advise that it is critical the methodology selected furthest minimises the environmental impacts selected and is informed by the Cable burial risk Assessment.		No change		No change		No change		<p>impact on sensitive features during the detail design.</p> <p>The Applicant is submitting an Outline Cable Burial Risk Assessment (Document Reference: 8.85) and Outline Cable Specification and Installation Plan (Document Reference: 8.88) at Deadline 5, in response to Action Point 19 of the Action Points arising from ISH 2 [EV5-018]. The Final versions of these Plans will be required to accord with the Outline plans, as secured within Condition 11(1)(n) of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5)).</p> <p>As detailed within the Applicant's Responses to Relevant Representations [REP1-017], the Applicant notes that impacts will be mitigated as far as practicably possible in the selection of the most appropriate mitigation measures and cable routing design, however economic viability and construction logistics are both also relevant considerations in the process. The Applicant would highlight that the Final Cable Specification And Installation Plan will be subject to scrutiny prior to construction as, secured in Condition 11(1)(n) of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5)), which requires the final plan to be submitted to and approved in writing by the MMO. The Applicant further confirms that the Final Cable Specification And Installation Plan will be informed by the Cable Burial Risk Assessment.</p> <p>The Applicant is submitting an Outline Cable Burial Risk Assessment (Document Reference: 8.85) and Outline Cable Specification and Installation Plan (Document Reference: 8.88) at Deadline 5, in response to Action Point 19 of the Action Points arising from ISH 2 [EV5-018].</p>

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F65	Natural England understands that final pre-construction survey data is required to inform micro-siting. Natural England requests that further information is provided on the contents of the pre-construction surveys. Natural England advises the inclusion of full geophysical coverage (including side scan sonar) and full drop-down video coverage of all the sensitive features identified, as this is required to determine the extent of these features and inform micro-siting. We advise that any data used to inform micro-siting should be less than 24 months old at the time of construction. We refer the Applicant to our detailed comments above. We advise that the Applicant updates the IPMP accordingly as part of the consenting process.		No change		No change		No change		As set out in the Offshore In Principle Monitoring Plan [REP4-055] , the delivery of which is secured in Condition 11(1)(j) and Condition 16(2)(b) of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5)) a single geophysical (sidescan or MultiBeam Echo Sounder) survey of those areas within which it is proposed that seabed works will be carried out at a resolution sufficient to identify chalk habitat, stony reef, and potential <i>S. spinulosa</i> reef; and In areas where chalk reef, stony reef, peat and clay exposures and potential <i>S. spinulosa</i> reef is identified from the review of the geophysical data, drop down video and/or stills will be deployed to confirm presence and extent. This will ensure provision of an appropriately contemporary dataset (i.e. less than 24 months old) with which to finalise any required micro-siting to avoid sensitive features. Survey programmes and methodologies for the purposes of monitoring shall be submitted to the MMO for written approval at least four months prior to the commencement of any survey works.
F66	Natural England advises that post construction monitoring will be required. Natural England expect that		No change		No change		No change		As set out in the Offshore In Principle Monitoring Plan [REP4-055] (updated at Deadline 5), the requirements for post-construction monitoring will be dependent on the findings of the pre-construction surveys. Where chalk habitat,

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	<p>monitoring would be undertaken to demonstrate recovery, with further measures being triggered if this was not shown. We advise this is included by the Applicant within the updated IPMP. We advise that a pre-construction monitoring plan will need to be agreed in consultation with NE and this should be guided by the IPMP which should be updated by the Applicant to ensure key questions will be answered by the monitoring.</p>								<p>stony reef, peat and clay exposures and <i>S. spinulosa</i> reef is identified during the baseline survey, a single post-construction survey, specifically targeting those habitats and reefs identified in the baseline survey, will be undertaken as a check on their condition using the same methodology set out for pre-construction monitoring. Where no stony reef, peat or clay exposures, and/or <i>S. spinulosa</i> reef is identified by the preconstruction survey, no post-construction surveys will be undertaken. However, the scope and design of all monitoring work should be finalised and agreed following review of the results of any preceding survey and/or monitoring work (i.e., an adaptive approach), including those surveys conducted in support of the EIA. This includes the potential for future survey requirements to be adapted based on the results of the monitoring outlined. Where it has been agreed that there are no significant impacts, monitoring need not be conditioned through the dMLs.</p> <p>Survey programmes and methodologies for the purposes of monitoring shall be submitted to the MMO for written approval at least six months prior to the commencement of any survey works and conducted within the first-year post commissioning of the proposed wind farm.</p>
F70	<p>We advise that it should be acknowledged that up to 20% of the export cable may require cable protection, and that 54% may need to be mechanically trenched. Therefore, there is the potential for permanent habitat loss/potentially significant habitat alteration if sensitive</p>		No change		No change		No change		<p>As set out in the Offshore In Principle Monitoring Plan [REP4-055] (updated at Deadline 5), the installation of cables potentially requires differing techniques according to the nature of the seabed in different parts of the proposed Order limits area. This will be informed by the Final Cable Burial Risk Assessment, which will be completed pre-construction but post-consent. The selection of the technique deemed most appropriate to the seabed conditions does not negate the mitigation strategy of micrositing and avoidance during the routing design works; rather, this is a critical</p>

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	<p>features cannot be avoided. In reference to the points regarding 'routeing design and micrositing', and 'use of specialist cable laying and installation techniques' we advise that the Applicant has not acknowledged the above mechanical trenching situation, which potentially renders this mitigation ineffective over more than half the route already. We advise the limitations to the achievability of the mitigation proposed need to be fully considered by the Applicant and informed by the updated Cable Burial Risk Assessment as part of the consenting phase.</p>								<p>component considered alongside the mapping of sensitive features derived from the pre-construction surveys in the cable routeing design as part of the Final Cable Specification And Installation Plan, secured in Condition 11(1)(n) of the dMLs (Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5)). The objective of the Final Cable Specification and Installation Plan is to identify cable routeing and installation techniques that delivers avoidance of sensitive features where practicable and the minimisation of impacts where this cannot be achieved. The Applicant therefore disagrees that the use of mechanical trenching renders mitigation ineffective over more than half of the route.</p> <p>The specific locations that require the placement of cable protection will also be determined on the results of the cable burial risk assessment and cable routeing design work and again does not negate the mitigation strategies set out within the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5) for the reasons given above.</p> <p>The Applicant highlights that in respect of both cable protection and cable installation works, the potential for habitat loss (where avoidance is not achievable following the application of the approaches detailed in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5)) is assessed as such within Chapter 9: Benthic, subtidal and intertidal ecology, Volume 2 of the Environmental Statement [REP4-018] (updated at Deadline 5).</p> <p>The Applicant is submitting an Outline Cable Burial Risk Assessment (Document Reference: 8.85) and Outline Cable Specification and Installation Plan (Document Reference: 8.88) at</p>

Point	Taken from Natural England's Relevant and Written Representations Rampion 2 Appendix F - Benthic, Subtidal and Intertidal Ecology [RR-265]	RAG Status Rel and WR Rep D1	Consultation, actions, progression	RAG Status at D2	Consultation, actions, progression	RAG Status at D3	Consultation, actions, progression	RAG Status at D4	Applicant's Response
F69	Natural England advises that across industry a 50m buffer is implement around all Sabellaria spinulosa reef to reduce the likelihood of direct impacts. We advise that the commitment/ Schedule of mitigation is updated to include the 50m buffer. We understand that a 50m buffer would be applied to all sensitive features, and advise that this should be applied as a minimum to the limits of the cable corridor geophysical data collected, to account for any potential features just over the boundary. This is independent to buffering requirements in relation to other aspects. We advise this is amended to provide commitment to the buffers and the Applicant updates the IPSFMP accordingly.		No change		No change		No change		<p>Deadline 5, in response to Action Point 19 of the Action Points arising from ISH 2 [EV5-018].</p> <p>As set out in the Offshore In Principle Monitoring Plan [REP4-055] (updated at Deadline 5), the Applicant has included a Commitment (C-270 of the Commitments Register [APP-254]), which states:</p> <p><i>“As part of the routeing design, a working separation distance (buffer) will be maintained wherever possible from sensitive features, notably black seabream nesting areas, as informed by the outputs of the physical processes assessment, to limit the potential for impacts to arise (direct or indirect).”</i></p> <p>This commitment is included within the measures set out within the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5) (as secured in Condition 11(1)(k) of the dMLs Schedules 11 and 12 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5)), which also details the approach to establishing buffers for sensitive receptors where avoidance can be achieved within the routeing design. Where avoidance is possible, the buffer will be set based on the potential for significant effects to arise on the receptor as informed by the physical processes assessment. The Applicant considers this to be more appropriate than a blanket buffer commitment.</p>
F70	We note that when the environmental and technical constraints are combined visually, there already appears to be areas of potential		The update to Figure 5.1 provided just increases the resolution, so our comments		No change		No change		<p>As set out in the Offshore In Principle Monitoring Plan [REP4-055] (updated at Deadline 5), the cable routeing design illustrated in Figure 5.1 of the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5) is based on the best available current data and</p>

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	biogenic reef that could be impacted, or where a buffer may not be possible. Whilst we support micrositing, we advise that it already appears it may not be possible to avoid some features, particularly when 4 cables will need to be installed. We also note that this figure just includes biogenic reef or potential black bream nests and advise that there are other sensitive features that have not been added (see comments above), which may compound the issue. We advise that the mapping is updated by the Applicant to include all sensitive features that require micrositing, and that discussion is provided in relation to where avoiding features may be unavailable, or buffers may be insufficient i.e. how will impacts be minimised?		remain unchanged.						demonstrates that there is the potential for the design mitigation to avoid impacts to the majority of sensitive features. The assessment and mitigation plan recognise the potential for some features to be unavoidable, however further mitigation as set out in the In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 5) will be applied as far as practicable to ensure that where impacts are unavoidable, these are appropriately minimised. Further refinement of the routeing design will be provided on the basis of the detailed pre-construction survey data, which will establish a contemporary and definitive basis for the micrositing measures.
F71	We note that both these methods require support vessels in the nearshore environment. We advise that this has the potential to further impact the chalk, due to		See F22		No change		Please see response to point F22.		The Applicant has proposed gravel beds as an alternative to flotation pits and provided a response to this point in Applicant's response to Action Points Arising from ISH2 and CAH1 for Deadline 5 (Document Reference: 8.91) submitted at Deadline 5.

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	<p>grounding of vessels. Natural England advises that although we understand that floatation pits will not be used to aid nearshore vessels, there is no clear and consistent alternative presented. We advise that full consideration of the environmental impacts of all options is provided, alongside sufficient information to determine effectiveness. Natural England has concerns that without this information, the Applicant will find that they need to amend the methodology to included floatation pits post-consent, something that NE is unlikely to be supportive of. We advise that the Applicant provides a clear and consistent methodology alongside further information on the possible effects and feasibility.</p>								

Appendix E

Natural England Risk and Issues Log tab

J: Terrestrial ecology

Point	Taken from Natural England's Relevant and Written Representations Rampion 2 Appendix J - Terrestrial Ecology [RR-265]	RAG Status at D3	Consultation, actions, progression	RAG Status at D4	Applicant's Response and reasoning at D5	Natural England's comments on consultation, actions, and progression	RAG status at D5
J1	<p>TOPIC: Severance at Landscape Scale</p> <p>We continue to advise that a fundamental requirement of the scheme is to demonstrate that the functionality of this environment can be maintained. We advise that the nature of this scheme requires a bespoke assessment of the impact of severance at a landscape -scale and that the severing impact of the scheme across interlinking habitats (regardless of species richness) must be fully understood. It is not clear from the evidence provided how this significant impact has been assessed. The scale of linear habitat affected makes this of critical importance.</p> <p>We advise that this assessment should be clearly integrated to include landscape and ecology and include all linear habitat features. The assessment must demonstrate how harm will be avoided and mitigated. Where this is demonstrably unavoidable and linear habitats are severed compensation must assess severance at the time of impact, confidence in efficacy of reinstatement and a clear timeframe for reinstatement.</p>				<p>Commitments C-115 and the Vegetation Retention and Removal Plans show that the fragmentation is localised. It is of a scale where mobile features such as bats and dormice could navigate the breaks (as evidenced in our Protected Species response to Natural England's Appendix J at Deadline 5). Further mitigation such as filling gaps with inert materials has also been secured (with evidence of efficacy provided at Deadline 5 as requested Smack 2022 (https://cdn.bats.org.uk/uploads/pdf/Resources/Bat-Groups/Accessing-journals/BritishIslandsBats_VolThree_2022.pdf?v=1658244969)). It is also noted that losses and reinstatement will be delivered sequentially.</p> <p>BNG will be front loaded and likelihood is for local delivery given discussions with land owners.</p>	<p>Discussed by Applicant and Natural England on 28 June 2024: the status cannot be agreed until LVIA expert has commented. The status for now therefore remains yellow.</p>	
J2	<p>TOPIC: FLL, Pintail</p> <p>Natural England note that a foraging range of ~18km (utilised by the northern pintail) has been stated, which has been used to assess the available functionally linked land (FLL), and then compared against the portion of the FLL which will be temporarily impacted during the construction phase. The ~18km foraging range appears to have been selected from a USA study from SW Louisiana, out of a comparison</p>		<p>Please see response to ExAQ at deadline 3. Natural England has discussed this with the Applicant. Once further clarification is provided Natural England is confident this issue can be progressed.</p>		<p>Meeting on 22 May 2024 provided details on distances and a map for further internal discussion. It is apparent that the FLL identified is not used by pintail at a level where changes would alter the fitness of the local population. Discussed by Applicant and Natural England on 27 June 2024 that the status is mutually agreed as: green.</p>	<p>The Applicant has clarified a few points to us on which we have originally submitted from previous responses and we are content that the land doesn't appear to be Functionally Linked Land (FLL).</p>	

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J3	<p>of 16 other foraging ranges studies (Johnson et al., 2014). Of this data set, "~18km" appears to be the highest figure chosen, whilst a study in France evidenced a foraging range of 1.3km.</p> <p>Natural England question why "~18km" was chosen to estimate the likely foraging range of pintails, when the France figure may be more representative, due to closer proximity. A much lower foraging range of 1.3km (France) would mean the northern pintail relies on the FLL a lot more than a pintail from Louisiana (~18km). Natural England request further explanation be provided by RED, to understand any likely impacts in relation to land take/land cover change effects, to the conservation objectives of the northern pintail of the Arun Valley Ramsar site.</p> <p>TOPIC: FLL Natural England note that the area of land left behind following construction may take several years to recover / fully re-establish. This linear habitat fragmentation causes severance of the landscape which could impact upon the Northern Pintail. Works may not be taking place during the vast majority of time Pintail is present, but habitat degradation may last for years after the construction and impact the species for negatively for years.</p> <p>In general, Natural England note that temporary loss of functionally linked land of the Arun Valley SPA and Ramsar site could occur for a number of years post construction. We note that reinstatement of the cable route corridor is proposed to</p>		No change		Meeting on 22 May 2024 provided details on distances and a map for further internal discussion. It is apparent that the FLL identified is not used by pintail at a level where changes would alter the fitness of the local population. Agreed position based on information discussed on 22 May 2024.	The Applicant has clarified a few points to us on which we have originally submitted from previous responses and we are content that the land doesn't appear to be FLL.	

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J4	<p>TOPIC: FLL</p> <p>In some circumstances, it appears the land disturbed by open trenching along the cable corridor will not be reinstated for 2 years post cable installation, meaning there is the potential for the existing habitat to not return to the</p>	[Yellow background]	No change	[Yellow background]	Meeting on 22 May 2024 provided details on distances and a map for further internal discussion. It is apparent that the FLL identified is not used by pintail at a level where changes would alter the fitness of the local population. Agreed position based on information discussed on 22 May 2024.	The Applicant has clarified a few points to us on which we have originally submitted from previous responses and we are content that the	[Green background]
	<p>take place within two years of the initial habitat loss. Natural England advises there is not sufficient certainty that full reinstatement to previous condition, and agricultural use, is likely to occur within the proposed time frame and is likely to be greatly longer if the construction phase is to last up to five years. This is made more likely if temporary fencing is to remain in place for the entirety of the five-year construction period.</p> <p>Furthermore, temporary fencing of the cable route within the FLL could be maintained beyond the five-year construction period (as seen with original Rampion cable route development), which could add further time delay until the FLL is fully reinstated to its previous agricultural use.</p> <p>Natural England advise that further assessment should be made into potential impacts of temporary loss of FLL. Precautionary principle should be applied to allow for a longer period of habitat loss and reinstatement back to previous condition.</p> <p>With regard to temporary fencing, Natural England advise that detail should be provided to demonstrate when or if temporary fencing will be removed following the construction period.</p>						

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J6	<p>standard it was before, for many years. This linear habitat fragmentation causes severance of the landscape which could impact upon species, for example displacing important bird species using the area as functionally linked land (FLL).</p> <p>Natural England advise that greater detail should be provided on the efficacy of embedded mitigation measure C-103 to prevent long sections of lost habitat awaiting reinstatement too long and causing severance through fragmentation. Can reinstatement begin as soon as practically possible, i.e. within a year, for the majority of the corridor of habitat lost following construction to prevent there being large gaps of habitat degradation?</p> <p>TOPIC: Water Neutrality Natural England advise that additional details be submitted, which considers how water neutrality could be demonstrated, without overly relying on a strategic mitigation scheme which is yet to become operational. Further consideration of how suitable water neutrality mitigation can be suitable secured, should be considered and provided by RED.</p> <p>To support in the assessment, Natural England would advise that an estimated water use should be calculated to inform the evidence base, for which mitigation measures should be proposed against. Without these details, it may not be possible to conclude with certainty, of no adverse effect on the integrity of the Arun Valley designated sites, from over abstraction of groundwater from within</p>		No change		Position of agreement between Natural England and Horsham District Council has been reached. The Applicant is therefore in line with nutrient neutrality with regards the stakeholders. Discussed by Applicant and Natural England on 28 June 2024: the status is mutually agreed as: green.	<p>land doesn't appear to be FLL.</p> <p>Issue resolved, refer to our D5 response (Section 2.1).</p>	

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	<p>the Sussex North Water Supply Zone.</p> <p>Be advised that it is also not apparent whether the SNOWS strategy will have sufficient capacity to offset this proposal's water demands in addition to the demands of wider development in Sussex North. This is an additional reason why the estimated water use should be calculated.</p>						
J7	<p>TOPIC: Water Neutrality Natural England note that water use within the SNWSZ during the construction phase of the proposal, has not been screened to determine whether any increase in water use is likely to have a significant effect (LSE) on Arun Valley designated sites (SPA, SAC and Ramsar site).</p> <p>Natural England advise that RED conduct a routine screening exercise, to determine whether increased water use during the construction phase of the proposal is likely to have a significant effect (LSE) on the Arun Valley designated sites.</p>		No change		<p>Position of agreement between Natural England and Horsham District Council has been reached. The Applicant is therefore in line with nutrient neutrality with regards the stakeholders. Discussed by Applicant and Natural England on 28 June 2024: the status is mutually agreed as: green.</p>	Issue resolved, refer to our D5 response.	
J8	<p>TOPIC: Water Neutrality Natural England question whether no LSEs on hydrological regimes across designated sites can be concluded, as mitigation will need to be demonstrate Water Neutrality for the proposed development.</p> <p>Natural England advise that clarification should be provided, to determine whether the requirement to demonstrate water neutrality for the Arun Valley designated sites, relates</p>		No change		<p>Position of agreement between Natural England and Horsham District Council has been reached. The Applicant is therefore in line with nutrient neutrality with regards the stakeholders. Discussed by Applicant and Natural England on 28 June 2024: the status is mutually agreed as: green.</p>	Issue resolved, refer to our D5 response.	

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J10	<p>to changes in hydrological regimes of the Arun Valley designated sites.</p> <p>TOPIC: HDD Natural England are concerned that RED are overly reliant on specific embedded measures (i.e. HDD), to mitigate against permanent loss of irreplaceable habitats such as Ancient Woodland. Site specific feasibility studies for embedded measures such as HDD have not been undertaken to date. Natural England advise that the commitment register should be updated, so that open trenching is not a back-up option through irreplaceable habitats if trenchless crossing operations were to fail.</p>		No change		<p>The Applicant has corresponded through the written process, and has set out the position that geotechnical ground condition studies cannot be completed at this stage of the project and provided evidence to underpin the statement that trenchless crossings are not at risk of being undeliverable and do not pose a high risk to the environment. The Applicant has allowed for wider areas at the locations of concern to identify the optimal trenchless crossing routes based on pre-construction site investigations. Natural England have stated that the matter that is disagreed.</p> <p>Discussed by Applicant and Natural England on 28 June 2024: no agreement will be reached.</p>	Natural England reiterates that there remains residual risk that open cut methods could be reconsidered as a DCO variation at a future date, should trenchless crossings not be feasible at these ecologically sensitive sites during the construction phase of the development.	
J11	<p>TOPIC: HDD, PAWS Natural England are concerned with the proposed permanent and irreplaceable loss of approximately 0.99 ha of plantation on ancient woodland soils (PAWS), associated with proposed LACR-02. Natural England does not endorse the loss of and damage to ancient woodlands, which are afforded significant protection in planning policy. This route option should only be considered where no other routes are found to be viable. Should this route be selected Natural England request to be consulted to ensure the best environmental outcomes and that the least impactful methodology is used.</p>		No change		<p>This is outdated and is based on route options that were consulted on but ultimately were not progressed in the application. Discussed by Applicant and Natural England on 28 June 2024: the status is mutually agreed as: green.</p>	Further clarification has been provided by the Applicant provided - proposed route no longer runs through LACR-02, so this risk is now marked as resolved.	
J12	<p>TOPIC: HDD Trenchless crossings are an embedded mitigation measure, which if enacted successfully, will avoid impacts to</p>		No change		<p>The Applicant has signposted the mitigation measures for any frac out events. The DCO wording and the commitments register have been updated through examination to reassure stakeholders that</p>	Natural England reiterates that there remains residual risk that open cut methods could be	

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J13	<p>ancient woodland. However, Natural England note that most mitigation measures carry their own risks. Without understanding these risks, it can be difficult to assess whether the mitigation will be effective, and the damage avoided.</p> <p>Natural England advise that reassurances are needed to ensure this significant effect are truly avoided.</p> <p>We note that there appears to be a risk of regressing to open trench techniques through irreplaceable habitats, should trenchless techniques not be possible.</p> <p>TOPIC: HDD feasibility</p> <p>Natural England question whether the Environmental Statement has an over reliance on trenchless crossing as an embedded measure. Natural England notes that alternative installation options to trenchless techniques could result in irreparable damage to Ancient Woodlands and Chalk Scarps. Therefore, we advise that in order to provide the decision makers with the necessary confidence that mitigation measures are deliverable, an Outline Trenchless Crossing Feasibility Study is submitted into the examination. We advise that the Outline Landscape Ecology Management Plan should secure the provision and sign off, of a final version which will need to be agreed post consent and prior to construction.</p>	<div style="background-color: yellow; width: 100%; height: 100%;"></div>	No change	<div style="background-color: yellow; width: 100%; height: 100%;"></div>	<p>there is no option to regress to open cut trenching. See comments on point 12 in association with this comment too.</p> <p>Discussed by Applicant and Natural England on 28 June 2024: no agreement will be reached.</p> <p>Discussed by Applicant and Natural England on 28 June 2024: no agreement will be reached.</p>	<p>reconsidered as a DCO variation at a future date, should trenchless crossings not be feasible at these ecologically sensitive sites during the construction phase of the development.</p> <p>Natural England reiterates that there remains residual risk that open cut methods could be reconsidered as a DCO variation at a future date, should trenchless crossings not be feasible at these ecologically sensitive sites during the construction phase of the development.</p>	<div style="background-color: red; width: 100%; height: 100%;"></div>

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J14a	<p>TOPIC: Embedded measures, HDD, Hedgerows</p> <p>Natural England note that efficacy of a number of embedded mitigation measures have not been fully assessed with sufficient detail.</p> <p>Natural England advise that greater detail should be provided on the efficacy of embedded mitigation measures C-5, C-43 (trenchless crossings) and C-115 (hedgerows). Natural England note that detailed feasibility assessment for trenchless crossings is proposed to be conducted post DCO acceptance.</p>		No change		<p>Discussed by Applicant and Natural England on 28 June 2024: any trenchless crossing of a hedgerow alone will be short and could be delivered via various techniques. Unlikely to be of concern to Natural England as longer HDD under sensitive sites.</p> <p>The Applicant and Natural England have agreed that this issue will not be resolved within the examination.</p>	<p>Agree to disagree - Natural England recognises that the Applicant is not minded to provide this information within the examination period and therefore disagreement will remain on this matter until such a time where this information is provided.</p> <p>NB: J14 has been split into two rows, to differentiate between HDD and other embedded mitigation measures.</p>	
J14b	<p>TOPIC: Embedded measures, HDD, Hedgerows</p> <p>Natural England note that efficacy of a number of embedded mitigation measures have not been fully assessed with sufficient detail.</p> <p>Natural England advise that greater detail should be provided on the efficacy of embedded mitigation measures C-5, C-43 (trenchless crossings) and C-115 (hedgerows). Natural England note that detailed feasibility assessment for trenchless crossings is proposed to be conducted post DCO acceptance.</p>				<p>Discussed by Applicant and Natural England on 28 June 2024: any trenchless crossing of a hedgerow alone will be short and could be delivered via various techniques. Unlikely to be of concern to Natural England as longer HDD under sensitive sites.</p>	<p>Natural England won't provide any further details on this issue until the detailed design stage</p>	
J15	<p>TOPIC: HDD</p> <p>Natural England note that no detailed feasibility to outline the risks of trenchless crossings has been submitted to date.</p> <p>Natural England note that RED have</p>		No change		<p>Discussed by Applicant and Natural England on 28 June 2024: no agreement will be reached.</p>	<p>Agree to disagree - Natural England recognises that the Applicant is not minded to provide this information within the examination</p>	

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J16	<p>stated that impacts to irreplaceable habitats (such as ancient woodland) will be reassessed if an alternative option to trenchless crossings is required.</p> <p>Natural England notes that alternative installation options to trenchless techniques could result in irreparable damage to Ancient Woodlands and Chalk Scarps. Therefore, we advise that in order to provide the decision makers with the necessary confidence that mitigation measures are deliverable, an Outline Trenchless Crossing Feasibility Study is submitted into the examination. We advise that the Outline Landscape Ecology Management Plan should secure the provision and sign off, of a final version which will need to be agreed post consent and prior to construction.</p> <p>TOPIC: HDD Natural England note that ground investigation works are to be conducted post DCO acceptance. As ground investigation works are key to understanding the risks and feasibility of trenchless crossings, Natural England has consistently advised that ground investigation works be brought forward to inform the Environmental Statement of the DCO submission, specifically for trenchless crossing locations below sensitive habitats (e.g. ancient woodland) and in visually sensitive locations (e.g. chalk scarp at Sullington Hill LWS)</p> <p>Natural England notes that alternative installation options to trenchless techniques could result in irreparable</p>		No change		<p>Already addressed in the answers above - the response to points 12, 15, and 16 is relevant to this in particular. The point and has also been covered in written process of Examination. The geotechnical studies that have been requested by Natural England at specific locations are not possible at this stage of the project but will be delivered preconstruction instead.</p> <p>Discussed by Applicant and Natural England on 28 June 2024: no agreement will be reached.</p> <p>The Applicant and Natural England have agreed that this issue will not be resolved within the examination.</p>	<p>period and therefore disagreement will remain on this matter until such a time where this information is provided.</p> <p>Agree to disagree - Natural England recognises that the Applicant is not minded to provide this information within the examination period and therefore disagreement will remain on this matter until such a time where this information is provided.</p>	

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J17a	<p>TOPIC: HDD, Climping Beach SSSI Natural England note that trenchless techniques such as HDD is a form of mitigation that carries its own risks. Proposed trenchless crossing at Climping beach could be located beneath the western end of Climping Beach SSSI, though we note that Climping Beach SSSI could be completely avoided.</p> <p>Natural England advise that the mitigation hierarchy should be followed at Climping Beach SSSI. Impacts should be 'avoided, mitigated or as a last resort compensated'. Natural England would advise that HDD beneath Climping Beach SSSI should be avoided, in the first instance, before wholly relying on the embedded mitigation measure of trenchless techniques.</p>		No change		<p>Discussed by Applicant and Natural England on 28 June 2024: the Applicant and Natural England have agreed that this issue will not be resolved within the examination as support for a trenchless crossing of a SSSI will not be agreed.</p> <p>Outstanding discussion is on how this area of disagreement is reflected in the SoCG (non-material or material). Natural England to confirm position on 02 July 2024.</p>	<p>Natural England are not supportive of the use of HDD underneath Climping Beach SSSI. This will be a position acknowledged in the potential area of disagreement in the SoCG.</p> <p>NB: J17 has been split - this version refers to the principle of HDD underneath Climping Beach SSSI. The version below refers to the process for application of the mitigation hierarchy at detailed design.</p>	

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J17b					Discussed by Applicant and Natural England on 28 June 2024: the Applicant and Natural England agree that Commitment C-292 and changes to C-112 ensure that at detailed design the mitigation hierarchy will be applied with avoidance being the first option considered.	Commitment C-292 and changes to C-112 mean Natural England and the Applicant agree that the mitigation hierarchy should (and will be) applied at detailed design with avoidance being the first option considered. Although there is no agreement on HDD in principle, the implementation of the hierarchy is a shared outcome. Natural England await detailed design for this to be resolved.	
J20	<p>TOPIC: HDD, noise, SDNP</p> <p>Natural England note that trenchless crossing locations will result in noise levels of between 55dB and 75dB within the SDNP, which will likely impact the high tranquillity of the area.</p> <p>Natural England note that the elevated noise levels will result in harm to special quality 3 of the SDNP, 'tranquil and unspoilt places'.</p> <p>Natural England request further clarification on how embedded mitigation measures (i.e. C-26) can reduce the noise levels within the SDNP. Have noise levels of 75dB been calculated, without consideration of embedded mitigation measures?</p>				<p>Discussed by Applicant and Natural England on 28 June 2024: Natural England need to discuss with LVIA colleagues. Response by 02 July 2024 if possible.</p> <p>Further assessment of the SDNP special qualities and an overview of the statutory duties in relation to the South Downs National Park is provided in the Deadline 4 Submission – 8.25.5 Applicant's Post Hearing Submission – Issue Specific Hearing 2 Further information on South Downs National Park [REP4-063]). Whilst the assessment at residences focuses on specific locations, trenchless crossings will be within the SDNP and therefore the boundary of trenchless crossing is also effectively the receptor location for the SDNP. Due to this proximity, noise levels have been predicted at up to 75 dB without mitigation at the SDNP temporarily. Due to the temporary nature of this impact, it was concluded to be of minor effect and not significant.</p> <p>The Outline Code of Construction Practice (CoCP) [REP4-043] (updated at Deadline 5) outlines management measures and mitigation proposed at all onshore construction areas to reduce the effects relating to noise and vibration from construction of the Proposed Development, including commitments C-10, C-26, and C-263 (including screening of drilling equipment and compounds (Commitment C-26 (Commitments Register [REP4-57])). Commitment C-263 for the production of stage specific Noise and</p>	Checking internally with Landscape - will get back to Applicant on this point in due course.	

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					<p>Vibration Management Plans (NVMP) during detailed design based on the principles in the Outline Code of Construction Practice [REP4-043] (updated at Deadline 5), detailing best practicable means and location specific mitigation. The NVMP will be based on further assessment of noisy construction activities. Additional measures will be considered at these locations, such as mufflers, acoustic shrouds, and temporary noise barriers, where appropriate. Stage specific CoCPs are secured through Requirement 22 of the Draft Development Consent Order [REP4-004] (updated at Deadline 5).</p> <p>The Applicant has provided an Outline Noise and Vibration Management Plan [REP3-054] at Deadline 3, this management plan outlines the measures to manage the impact on noise and vibration for the onshore element of the Proposed Development. Stage specific NVMPs will be produced prior to the relevant stage of construction. They will be produced in accordance with the Outline Noise and Vibration Management Plan [REP3-054] and provided for approval of the planning authority as per the Draft Development Consent Order [REP4-004] as part of the stage specific CoCP. The stage specific NVMPs are secured through Requirement 22 (5) (h) of the Draft Development Consent Order [REP4-004] (updated at Deadline 5).</p> <p>It should be noted that the noise sources used to predict construction noise at the sites are considered by the Applicant to represent a worst case of all activities being undertaken simultaneously. And therefore, the predictions also represent a worst case.</p> <p>Chapter 21: Noise and vibration, Volume 2 of the ES [PEPD-018] also assesses presence of the trenchless crossings, including those at Michelgrove (TC-12) and Sullington Hill (TC-15), that are in areas of higher tranquillity near Public Rights of Way and Open Access Land at Sullington Hill and therefore high sensitivity in the assessment. This will include periods of continuous working while crossings are undertaken and it is acknowledged this will temporarily affect tranquillity in these locations. The ES concludes these are not significant effects when the short-term duration of such works is taken into account.</p> <p>The Outline Noise and Vibration Management Plan [REP3-054] includes provisions for the mitigation of noise including from trenchless crossings with detail to be provided in the stage specific NVMP secured via Requirement 22 (5) (h) of the Draft</p>		

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J21	<p>TOPIC: HDD, Commitment register, AW</p> <p>Natural England welcome commitment for all ancient woodland to be retained. Natural England requests clarification as to whether this commitment only relates to trenchless crossing operations.</p> <p>Natural England seeks clarification as to the specifics of this commitment.</p>		<p>Natural England welcomes that more specific details have been added to C-216, however our concerns remain regarding the achievability of HDD, without geotechnical information being available.</p>		<p>Development Consent Order [REP4-004] (updated at Deadline 5). With this considered and the short term duration of such works taken into account the ES concludes these are not significant effects.</p> <p>Access routes from access A-26 and A-28 cross the areas of higher tranquillity too and are assigned high sensitivity for noise and vibration. While it is predicted that there will be some impact, the assessment does not identify significant effects at receptors on these routes when considered against the criteria in BS5228.</p> <p>Chapter 21: Noise and vibration, Volume 2 of the ES [PEPD-018] assesses the noise effects during construction. In particular, the following areas of construction activity are noted:</p> <ul style="list-style-type: none"> - The impact of the Washington Temporary Construction Compound which is in close proximity to the SDNP border and is expected to be in place for the duration of construction. This compound is located next to the A283, where the tranquillity is relatively low as reflected on the South Downs National Park Tranquillity Study (SDNPA, 2017). The noise impact at this location is concluded to be not significant due to the low magnitude of impact, the temporary nature and the existing low tranquillity in this location. <p>Discussed by Applicant and Natural England on 28 June 2024. Natural England have confirmed that they have no further comments to make on this in a meeting on 02 July 2024.</p> <p>There is no proposed loss of ancient woodland. The draft DCO Order Limits are being altered at Deadline 5 to be at least 25m away from ancient woodland in five locations highlighted by the Examining Authority. The only places the red line will be within 25m will be where (a) an existing track / road would be used for access and no ground works are required or (b) at the location of the three access routes described in commitment C-216. Adequate space and existing barriers, alongside commitments to control dust, run-off, lighting and noise would be imposed to avoid any indirect effects. Further information will be supplied at Deadline 5 in response to the ExAs second written questions.</p>	<p>No further comments to make.</p>	
J23	<p>TOPIC: Embedded measure, Light impact, SDNP</p> <p>Natural England note that impacts of lighting to the South Downs National</p>				<p>Discussed by Applicant and Natural England on 28 June 2024: Natural England need to discuss with LVIA colleagues. Response by 02 July 2024 if possible.</p>	<p>Checking internally with Landscape - will get back to Applicant on this point in due course</p>	

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J34	<p>TOPIC: Embedded measures</p> <p>Natural England note that the wording of</p>		No change		<p>The Applicant has been refining and adding additional commitments throughout the examination period. In some</p>	Natural England accept the Applicant's reasoning.	

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J36	<p>securing mechanism is ambiguous such as "where possible" and "as far as practicable" are still used and relied on in a number of embedded mitigation measures. We advise that clarity is required when using embedded mitigation and that location and impact should be explicit along with suggested mitigation so that stakeholders can assess baseline, impact and mitigation readily. Care must be taken to ensure that mitigation one impact will not cause additional impacts (for example unsuitable planting impacting landscape character) .</p> <p>Greater detail of embedded mitigation measures which utilise these ambiguous terms, should be provided, to greater fully understand the risks and likely success rates of these mitigation measures. For all measures we advise that clarity is required for commitment measures and that terms "where practicable" for example are removed as this does not provide sufficient certainty of efficacy of mitigation and in addition and furthermore does not allow a robust and defined conclusion of impacts .</p> <p>TOPIC: Embedded measures Natural England note that numerous commitments include flexible wording such as 'where practical, as far as reasonably practical, as far as reasonably possible, practicable minimum, as practical, or are not practical, wherever possible, minimal time possible, shortest practical timeframe'. Such wording reduces the confidence if the delivery of the</p>		<p>Natural England will review the updated Commitments Register we understand will be submitted at deadline 4, and provide further advice at deadline 5 on whether our concerns regarding the commitments have been addressed.</p>		<p>commitments flexibility has to be retained into the detailed design phase, however commitment C-292 means that the mitigation hierarchy will be implemented and therefore there is a driver to seek for this flexibility to be removed as far as possible. The Commitments Register has been added as a codified document to the draft DCO.</p> <p>Discussed by Applicant and Natural England on 28 June 2024. In discussion on 02 July 2024, Natural England accepted the Applicant's reasoning and has no further comments at this stage. NE will review and confirm their position in due course. However, progress is acknowledged and this point of discussion is likely to go 'green'.</p> <p>Discussed by Applicant and Natural England on 28 June 2024 and 02 July 2024.</p> <p>The Applicant has been refining and adding additional commitments throughout the examination period. In some commitments flexibility has to be retained into the detailed design phase, however commitment C-292 means that the mitigation hierarchy will be implemented and therefore there is a driver to seek for this flexibility to be removed as far as possible. The Commitments Register has been added as a codified document to the draft DCO.</p>	<p>No further comment at this stage.</p> <p>We welcome the progress that has been made on C-1, C-7 and C-17. Natural England are no longer concerned with the ambiguity of commitments C-67 and C-78 as we accept the Applicant's reasoning. We still flag the ambiguity for commitments C-6, C-12,</p>	

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	<p>proposed commitments, which also make up embedded mitigation measures. We observed such wording used in the following commitments C-1, C-6, C-7, C-12, C-17, C-19, C-27, C-67, C-75, C-78, C-115, C-117 and C-128.</p> <p>Natural England note there is regular use of ambiguous terms utilised within a number of the embedded measures and commitments. As these embedded mitigation measures are to be relied upon for the project. Natural England advise that such terms should be further defined by RED, to understand the likely parameters and improve confidence in the delivery of these measures.</p>					C-19, C-27, C-75, C-115, C-117 and C-128. We request the Applicant to be more specific with their wording of these commitments.	
J37	<p><u>TOPIC: Remediation, embedded measure</u> Natural England acknowledge the commitment that areas of temporary habitat loss will behind reinstatement within 2 years of loss. However, to ensure the successful reinstatement of sensitive habitat, or habitats in visually sensitive locations, this maximum timeframe of within 2 years, could be shortened for sensitive habitats and habitats in visually sensitive locations.</p> <p>Natural England advise that an additional commitment could be made of sensitive habitats (i.e. calcareous grassland being reinstated within 6 months of the temporary habitat loss.</p>		No change		<p>Discussed by Applicant and Natural England on 28 June 2024 and 02 July 2024.</p> <p>The Applicant will seek to reinstate as soon as possible following loss. However, it is not possible to commit to a 6 month period given that a detailed design and associated schedule has not been created. It is noted that no ancient woodland or calcareous grassland would be lost to the development.</p>	The Applicant can't commit yet. Natural England are happy to pick up this risk at the detailed design stage.	
J41	<p><u>TOPIC: Embedded measures, Hedgerow</u> Natural England note that reference is made to 80% success rate for</p>				Discussed by Applicant and Natural England on 28 June 2024: Natural England will review and confirm their position in due course. However, discussion suggests that this is likely to go 'green'.	Checking internally with Landscape - will get back to Applicant on this point in due course	

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	<p>embedded measure (hedgerow translocation) used in the Lake District National Park. We question whether an 80% success rate is expected for this development.</p> <p>Natural England advise that further justification and evidence be provided to support this 80% success rate for hedgerow translocations for this development.</p> <p>Local context/factors should be considered to assess the likely success rate for this development, this should be used to inform the Landscape and Ecology Management Plan (LEMP).</p> <p>Natural England are also concerned that temporary visual impacts to the SDNP could occur if the translocation success rate has been overstated.</p> <p>Collectively, temporary hedgerow loss within the SDNP could lead to significant visual impacts, until the hedgerows are fully reinstated. Natural England would therefore advise that these impacts could be appropriately avoided (or greatly reduced) to the SDNP, if trenchless techniques (such as pipe jacking) were utilised for all hedgerow crossings within the SDNP.</p>				<p>On the request of stakeholders C-115 has been altered to say that hedgerow will either be removed (felled) or translocated (i.e. translocation is not a blanket option). The OLEMP has been updated to describe when and how hedgerows for translocation would be identified by an experienced practitioner. However, the assessment in the Environmental Statement is based on a worst case of felling and replanting.</p> <p>Examples have been provided of where this techniques has been acceptable for large infrastructure such as the Brechfa Forest Connection project and the OLEMP includes information on monitoring and management including watering.</p> <p>The Applicant notes that via Requirements 22 and 40 the relevant planning authority in consultation with Natural England will get to agree or disagree on locations for translocation, thereby retaining control of the process.</p>		
J51	<p>TOPIC: Protected Species, GCN</p> <p>eDNA undertaken outside the optimal window.</p> <p>It is recommended the best practice guidelines and supporting eDNA guidelines are adhered to.</p> <p>Where there is deviation, this could present constrained or incomplete data.</p> <p>It is recommended that Great Crested</p>		<p>Natural England has advised the Applicant to work directly with Natural England's Wildlife Licensing service to agree letters of no impediment for licensable species. We will update this issue again once</p>		<p>As recorded in Applicant's Comments on the Examining Authority's Schedule of Changes to the DCO (Document Reference: 8.83), the Applicant has updated the Draft Development Consent Order [REP4-004] at Deadline 5 to include a requirement for providing European Protected Species surveys onshore prior to the commencement of works, see Requirement 43. This has been noted on the Applicant's response back to tab A of Natural England's Risk and Issues log at D4 [REP4-096].</p>	<p>Natural England has no further comments at this stage.</p>	

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	Newt (GCN) surveys are regularly updated to ensure that impacts are fully assessed, and compensation can be well situated.		these have been secured.		Discussed by Applicant and Natural England on 28 June 2024. GCN eDNA samples were collected at a number of ponds up to 10 days after the best practice guidelines due to access issues. The Applicant is of the opinion that this data collection was better than no data collection. However, the majority of these ponds (access permitting) were re-sampled as reported in the Environmental Statement.		
J54	<p><u>TOPIC: Protected Species, GCN</u></p> <p>Three waterbodies were subject to eDNA testing only as Habitat Suitability Index (HSI) data was not collected by the surveyor.</p> <p>It is recommended the best practice guidelines and supporting eDNA guidelines are adhered to. Where there is deviation, this could present constrained or incomplete data. Should an EPS mitigation licence be required, it is recommended that GCN surveys are regularly updated to ensure that impacts are fully assessed, and compensation can be well situated. Efforts should be taken to include HSI in future survey efforts to gain a full picture of the waterbodies involved.</p>		Natural England has advised the Applicant to work directly with Natural England's Wildlife Licensing service to agree letters of no impediment for licensable species. We will update this issue again once these have been secured.		Discussed by Applicant and Natural England on 28 June 2024. Commitment C-214 ensures that GCN survey will take place prior to construction to inform the detailed design and the method statement to which the Ecological Clerk of Works will adhere. This is secured via the Biodiversity Management Plan that is part of Requirement 22.	Natural England has no further comments at this stage.	
J55	<p><u>TOPIC: Protected Species, GCN</u></p> <p><u>Consideration of all waterbodies.</u></p> <p><u>From reviewing the figures, there appears to be a number of waterbodies that did not received survey effort, such as ditches and lakes. In addition, please be mindful that GCN can also choose to utilise artificial structures for breeding, such as concrete lagoons, fire ponds or</u></p>		Natural England has advised the Applicant to work directly with Natural England's Wildlife Licensing service to agree letters of no impediment for licensable species. We will update this issue again once these have been secured.		Discussed by Applicant and Natural England on 28 June 2024. Commitment C-214 ensures that GCN survey will take place prior to construction to inform the detailed design and the method statement to which the Ecological Clerk of Works will adhere. This is secured via the Biodiversity Management Plan that is part of Requirement 22. It is noted that a DLL is the proposed route to provide compensation.	Natural England has no further comments at this stage.	

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J61	<p><u>disused swimming pools. Where waterbodies have been discounted for suitability, this will need to be justified should an EPS mitigation licence be required.</u></p> <p><u>TOPIC: Protected Species, Hazel dormouse</u></p> <p>It is referenced that 'a full survey programme to confirm presence/likely absence of hazel dormouse in all suitable habitats within the proposed DCO Order Limits was not deemed proportionate, especially given the 'Rochdale Envelope' approach (Planning Inspectorate, 2018)'</p> <p>Natural England would strongly recommend that the Best Practice Guidelines outlined in 'The Dormouse Conservation Handbook, Second Edition' are adhered to. Should you choose to deviate from this, detailed justification will be required to ensure that appropriate and robust conclusions have been drawn, should an EPS mitigation licence be required.</p>		<p>Natural England has advised the Applicant to work directly with Natural England's Wildlife Licensing service to agree letters of no impediment for licensable species. We will update this issue again once these have been secured.</p>		<p>As recorded in Applicant's Comments on the Examining Authority's Schedule of Changes to the DCO (Document Reference: 8.83), the Applicant has updated the Draft Development Consent Order [REP4-004] at Deadline 5 to include a requirement for providing European Protected Species surveys onshore prior to the commencement of works, see Requirement 43. This has been noted on the Applicant's response back to tab A of Natural England's Risk and Issues log at D4 [REP4-096].</p> <p>Discussed by Applicant and Natural England on 28 June 2024. Natural England currently reviewing draft licence application</p> <p>The Applicant has provided a response on Hazel dormouse survey at Deadline 4 and provided a draft licence application for the Oakendene substation. The Applicant is in line with approaches taken on other linear projects to which Natural England have agreed.</p> <p>The Applicant has provided information at Deadline 4 as to what approach to mitigation for temporary habitat loss of small area of habitat would be taken should preconstruction surveys (secured via commitment C-232) identify presence. This provides comfort that the principles of licencing can be applied.</p>	<p>No further comment.</p>	
J62	<p><u>TOPIC: Protected Species, Hazel dormouse</u></p> <p>It is referenced that 'in line with CIEEM guidance (CIEEM, 2018), discrete 'survey sites' were selected for sampling.</p> <p>Natural England would strongly recommend that the Best Practice Guidelines outlined in 'The Dormouse Conservation Handbook, Second</p>		<p>Natural England has advised the Applicant to work directly with Natural England's Wildlife Licensing service to agree letters of no impediment for licensable species. We will update this issue again once these have been secured.</p>		<p>Discussed by Applicant and Natural England on 28 June 2024. Natural England currently reviewing draft licence application</p> <p>The Applicant has provided a response on Hazel dormouse survey at Deadline 4 and provided a draft licence application for the Oakendene substation. The Applicant is in line with approaches taken on other linear projects to which Natural England have agreed.</p> <p>The Applicant has provided information at Deadline 4 as to what approach to mitigation for temporary habitat loss of small area of habitat would be taken should preconstruction surveys (secured</p>	<p>No further comment.</p>	

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	<p>Edition' are adhered to. Should you choose to deviate from this, detailed justification will be required to ensure that appropriate and robust conclusions have been drawn, should an EPS mitigation licence be required.</p>				<p>via commitment C-232) identify presence. This provides comfort that the principles of licencing can be applied.</p>		
J63	<p><u>TOPIC: Protected Species, Hazel dormouse</u></p> <p>As the design of the Proposed Development evolved, a number of the survey sites are no longer within or adjacent to the proposed DCO Order Limits.</p> <p>Suitability and connectivity of habitat can change and may mean that dormouse adapt how they utilise the landscape. It is recommended to regularly update the surveys based on the proposed impacts within and adjacent to the proposed DCO Order Limits. With the change in the Order Limits, it may be that the survey locations are updated/adjusted in line with the Best Practice Guidelines, 'The Dormouse Conservation Handbook, Second Edition'.</p>		<p>Natural England has advised the Applicant to work directly with Natural England's Wildlife Licensing service to agree letters of no impediment for licensable species. We will update this issue again once these have been secured.</p>		<p>Discussed by Applicant and Natural England on 28 June 2024. Natural England currently reviewing draft licence application</p> <p>The Applicant has provided a response on Hazel dormouse survey at Deadline 4 and provided a draft licence application for the Oakendene substation. The Applicant is in line with approaches taken on other linear projects to which Natural England have agreed.</p> <p>The Applicant has provided information at Deadline 4 as to what approach to mitigation for temporary habitat loss of small area of habitat would be taken should preconstruction surveys (secured via commitment C-232) identify presence. This provides comfort that the principles of licencing can be applied.</p>	<p>No further comment.</p>	
J75	<p><u>TOPIC: BNG</u></p> <p>Natural England note that 2.7ha of woodland is to be provided around the location of the onshore substation. It is however not clear if this compensation is being delivered separate, or as part of BNG delivery.</p>				<p>Discussed by Applicant and Natural England on 28 June 2024. Natural England to review and confirm position. This is pending 'green' status.</p> <p>The Applicant has discussed this issue with Natural England and note that the Statutory Biodiversity Metric calculates both 'no net loss' and BNG. The Applicant has noted this point in ISH and written answers to the ExA.</p>	<p>Natural England has closed out this R&I as this issue will not be resolved until post examination. Please see further comments within Appendix J4b of our deadline 4 submission.</p>	

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	<p>Natural England advise that RED need to clearly differentiate between habitat being delivered for compensation, and habitat being delivered for BNG.</p> <p>Natural England advise that one clear log should be created, to clearly list and audit the habitat compensation, BNG enhancement and BNG habitat creation, being proposed for the entirety of the onshore phase of the development.</p>				As the BNG calculations show a unit deficit all outlined planting is compensation by default.		
J92	<p>TOPIC: Soils, remediation</p> <p>Natural England welcome the commitment to reinstate to pre-existing conditions in line with Defra 2009 Code of Construction Practice for the Sustainable Use of Soils on Construction Sites, but this needs to go wider so that best and most versatile agricultural land is returned to the same Agricultural Land Classification (ALC) grade as pre-construction.</p> <p>Natural England advise that this commitment should extend, more specifically, to returning the best and most versatile land back to the same ALC grade as pre-construction. This design principle should also extend to land temporarily required for construction but being returned to a 'soft' non-agricultural after-use.</p>		Natural England welcomes commitments made in the Outline Soils Management Plan. Natural England will review the updated Commitment Register at submitted at Deadline 4 to ensure the two align.		<p>The Applicant acknowledges Natural England's update and awaits Natural England's feedback on the updated Outline Soils Management Plan [REP3-027] and Commitment Register [REP4-057] submitted at Deadline 4 and 5.</p> <p><i>'Post construction, reinstatement of agricultural land, or other areas of 'soft' land use where the natural soil profile is present, will be to pre-existing conditions and if remaining in agricultural use, to the original ALC grade, where the design allows (including over the onshore cable ducts). This will be completed in accordance with the Materials Management Plan (MMP) (C-69) and Defra 2009 Code of Construction Practice for the Sustainable Use of Soils on Construction Sites PB13298. The stage specific Soil Management Plan(s) (SMP(s)) are to be used in conjunction with the MMP (and Soil Resource Plan – which will be integrated with and may form a sub-section of the MMP) to maximise the restoration of excavated soils to their pre-existing condition and location, and if this is not possible, to maximise the reuse of soils within the Proposed Development, minimising soils being relocated outside the Proposed Development or becoming waste'.</i></p>		
J93	<p>TOPIC: Soils, remediation</p> <p>ALC grades need to be maintained - 'as far as reasonably practical' seems to imply that restoration back to previous state is not necessarily a requirement.</p>		Natural England welcomes commitments made in the Outline Soils Management Plan. Natural England will review the updated		<p>The Applicant acknowledges Natural England's update and awaits Natural England's feedback on the updated Outline Soils Management Plan [REP3-027] and Commitment Register [REP4-057] submitted at Deadline 4 and 5.</p>	Natural England welcome the alteration of ambiguous wording to C-7.	

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	Natural England advise that wording for commitment C-7 is modified, to state that ALC will be reinstated to their pre-existing condition.		Commitment Register at submitted at Deadline 4 to ensure the two align.		'Post construction, reinstatement of agricultural land, or other areas of 'soft' land use where the natural soil profile is present, <i>will be to pre-existing conditions and if remaining in agricultural use, to the original ALC grade, where the design allows (including over the onshore cable ducts). This will be completed in accordance with the Materials Management Plan (MMP) (C-69) and Defra 2009 Code of Construction Practice for the Sustainable Use of Soils on Construction Sites PB13298. The stage specific Soil Management Plan(s) (SMP(s)) are to be used in conjunction with the MMP (and Soil Resource Plan – which will be integrated with and may form a sub-section of the MMP) to maximise the restoration of excavated soils to their pre-existing condition and location, and if this is not possible, to maximise the reuse of soils within the Proposed Development, minimising soils being relocated outside the Proposed Development or becoming waste'.</i>		
J94	<p>TOPIC: Soils, remediation</p> <p><i>'Following construction, construction compounds will be returned to previous conditions as far as reasonably possible'</i></p> <p>Same as above comments- Natural England advise that commitment wording should be updated and should more accurately define the expectation for reinstatement.</p>		Natural England will review the updated Commitments Register at submitted at Deadline 4 to determine if our issues have been addressed.		<p>The Applicant acknowledges Natural England's update and awaits Natural England's feedback on the updated Outline Soils Management Plan [REP3-027] and Commitment Register [REP4-057] submitted at Deadline 4 and 5.</p> <p><i>'Post construction, reinstatement of agricultural land, or other areas of 'soft' land use where the natural soil profile is present, will be to pre-existing conditions and if remaining in agricultural use, to the original ALC grade, where the design allows (including over the onshore cable ducts). This will be completed in accordance with the Materials Management Plan (MMP) (C-69) and Defra 2009 Code of Construction Practice for the Sustainable Use of Soils on Construction Sites PB13298. The stage specific Soil Management Plan(s) (SMP(s)) are to be used in conjunction with the MMP (and Soil Resource Plan – which will be integrated with and may form a sub-section of the MMP) to maximise the restoration of excavated soils to their pre-existing condition and location, and if this is not possible, to maximise the reuse of soils within the Proposed Development, minimising soils being relocated outside the Proposed Development or becoming waste'.</i></p>	The Applicant has pointed out the changes to C-7 (as above) for the ambiguous wording that still remains in C-27.	
J98	<p>TOPIC: Soils, SMP</p> <p>Natural England advise that the Soil Management Plan (SMP) should show the areas and type of topsoil and subsoil to be stripped, haul routes to be used, the location and type of each stockpile.</p>		Natural England welcomes the addition of point 5.2.18 made in [APP-226] 7.4 OSMP. However, we are still awaiting determinations of areas and type of		<p>The Applicant acknowledges Natural England's update and awaits Natural England's feedback on the updated Outline Soils Management Plan [REP3-027] and Commitment Register [REP4-057] submitted at Deadline 4.</p> <p>As stated in the Outline Soils Management Plan [REP3-027], stage specific Soils Management Plans will be produced by the</p>	Natural England has closed out this R&I as this issue will not be resolved until post examination.	

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	<p>Natural England advise that the SMP should be a key document feeding into the Materials Management Plan (MMP) and should include: the areas and type of topsoil and subsoil to be stripped, haul routes to be used, the location and type of each soil stockpile.</p>		<p>topsoil and subsoil to be stripped and haul routes to be used.</p>		<p>appointed Contractor(s) following the grant of the Development Consent Order and prior to the relevant stage of construction. All soil types and measures for their handling and storage will be confirmed in the stage specific Soils Management Plans. During pre-construction, soil volumes will be confirmed in the Materials Management Plan and Soil Resource Plan, which will interact with the stage specific Soils Management Plans. These will be submitted for the approval of the relevant planning authority as part of the stage specific Code of Construction Practice.</p>		
J99	<p>TOPIC: Soils, handling</p> <p>Natural England advise that soil handling should normally be avoided during November to March inclusive, irrespective of soil moisture conditions, because it will generally not be possible to establish vegetative cover over winter to help dry out soils and protect them from erosion.</p> <p>Natural England advise that soil handling is avoided during November to March inclusive.</p>		<p>Natural England will review the updated Commitments Register at submitted at Deadline 4 to determine if our issues have been addressed.</p>		<p>The Applicant acknowledges Natural England's update and awaits Natural England's feedback on the updated Outline Soils Management Plan [REP3-027] and Commitment Register [REP4-057] submitted at Deadline 4 and 5.</p>	<p>Natural England awaits confirmation that the ambiguity of "<i>topsoils and trench excavation will be focused in drier periods where possible (typically between the start of May and the end of October)</i>" is removed from REP3-027 from discussions with engineering at post examination.</p>	
J100	<p>TOPIC: Soils, handling</p> <p>Natural England advise that soils should only be handled in a dry and friable condition.</p> <p>A field suitable method for assessing whether soils are in a dry and friable condition based on plastic limits is set out in Part One (Explanatory Note 4- Table 4.2) of the Institute of Quarrying's Good Practice Guide for Handling Soils in Mineral Working. We advise that this approach together with the associated rainfall protocols should be adopted.</p>		<p>Natural England welcomes commitments made in the Outline Soils Management Plan. Natural England will review the updated Commitments Register at submitted at Deadline 4 to ensure the two align.</p>		<p>The Applicant acknowledges Natural England's update and awaits Natural England's feedback on the updated Outline Soils Management Plan [REP3-027] and Commitment Register [REP4-057] submitted at Deadline 4 and 5.</p> <p>This approach is included as a requirement for assessing whether soils are sufficiently dry to be handled in Section 5.2 of the Outline Soils Management Plan [REP3-027].</p>	<p>Natural England will review this at Deadline 6.</p>	

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J101	<p><u>TOPIC: Soils, embedded measure, seasonal measures</u></p> <p>Natural England advise that an intention to remove vegetation over the winter period needs to be balanced against the risk of soil damage from use of heavy machinery on wet soils and leaving soils bare over-winter.</p> <p>Natural England advise that in most circumstances, soils should remain vegetated over-winter and trafficking by heavy machinery should be avoided.</p>		No change		<p>The Applicant acknowledges Natural England's update and awaits Natural England's feedback on the updated Outline Soils Management Plan [REP3-027] and Commitment Register [REP4-057] submitted at Deadline 4 and 5.</p>	<p>Natural England awaits confirmation that the ambiguity of "topsoils and trench excavation will be focused in drier periods where possible (typically between the start of May and the end of October)" is removed from REP3-027 from discussions with engineering at post examination.</p>	
J112	<p><u>TOPIC: Soils, remediation, SDNP'</u></p> <p>Any remediation required post initial restoration will be driven by commercial considerations of farming practice (land drainage is not functioning as previously) as opposed to habitat quality for biodiversity' - Natural England note that visual impacts to SDNP have not been considered in the requirement for remedial action.</p> <p>Natural England would advise that remediation required post initial restoration for landscape visual impacts to the SDNP should be for material consideration, if initial landscape restoration works have failed.</p>				<p>New addition to the Outline SMP - commitment to define site-specific restoration plans in the stage specific SMPs. New text in para 7.1.4: The site-specific restoration plans detailing how the land will be restored to agricultural use, in accordance with Natural England guidance (Natural England, 2022), will be defined in the stage specific SMPs. The restoration plans will include the period of aftercare and reinstatement standard (where the aftercare phase will be deemed to be complete).</p>	<p>Checking internally with Landscape - will get back to Applicant on this point in due course.</p>	
J113	<p><u>TOPIC: Soils, remediation</u></p> <p>Reinstatement of calcareous grasslands could prove challenging at certain times of year. The seed bank stockpile should be stored at certain times of year. The seed bank stockpile should be stored for the shortest amount of time possible,</p>		No change		<p>The Applicant has updated the Outline Soils Management Plan [REP3-027] for a commitment to define site-specific restoration plans in the stage specific SMPs. See paragraph 7.1.4: "<i>The site-specific restoration plans detailing how the land will be restored to agricultural use, in accordance with Natural England guidance (Natural England, 2022), will be defined in the stage specific SMPs. The restoration plans will include the period of aftercare</i></p>	<p>Natural England understands that this will be done Post Consent and we will feed in at that time</p>	

Point	Taken from Natural England's Relevant and Written Representations Rampion 2 Appendix J - Terrestrial Ecology [RR-265]	RAG Status at D3	Consultation, actions, progression	RAG Status at D4	Applicant's Response and reasoning at D5	Natural England's comments on consultation, actions, and progression	RAG status at D5
J117	<p>and ideally reinstated during the autumn or late winter/early spring.</p> <p>Timing of reinstatement of the seedbank should be considered, whilst also minimising the length of time spent in a stockpile.</p> <p>If reinstatement is to occur during the summer months, we would expect a greater level of monitoring (and perhaps watering) during the initial reinstatement. This is to improve the success rates of reinstatement during the summer months.</p> <p>Additional consideration should also be given to areas of calcareous grassland to be reinstated within the SDNP, as poor or failure to reinstate could have visual landscape impacts upon the SDNP.</p> <p>Our review of the documents submitted since our relevant/written representations have raised some significant terrestrial ecology concerns, particularly in relation to protected species. We are conducting a thorough review as expediently as possible alongside our wildlife licensing colleagues. We intend to provide an additional submission direct to the Applicant and PINs.</p>		<p>Natural England has advised the Applicant to work directly with Natural England's Wildlife Licensing service to agree letters of no impediment for licensable species. We will update this issue again once these have been secured.</p>		<p><i>and reinstatement standard (where the aftercare phase will be deemed to be complete)."</i></p>	<p>Natural England notes the Applicant's decision not to pursue LONI's for specific species, but caveats that any residual risks associated with this approach will be borne by the Applicant. We acknowledge the route being taken by the Applicant.</p>	

Appendix F

Supplementary Technical Note

Supplementary Technical Note

Rampion 2

Interface with Aquind

1. Introduction

- 1.1 The Applicant has been in discussions with Aquind regarding the terms of a Co-Operation Agreement with the intention of agreeing the parameters for the interface of the construction, operation, maintenance and decommissioning of the Rampion 2 Project, and the proposed Aquind interconnector project. A copy of the draft Co-operation Agreement is at Annex 1 to this note. This note responds to points made in the Position Statement submitted to the Examining Authority on 16 May 2024 ("**Aquind Position Statement**"), which was in turn a response to a Technical Note submitted to Aquind by the Applicant on 6 May 2024.

2. Applicant's position

- 2.1 In setting out its position, the Applicant would note that good progress has been made on many of the matters in the draft Co-operation Agreement, but a key point of principle remains outstanding regarding proximity/separation distances of respective apparatus. The Applicant strongly disagrees with Aquind's position that the Subsea Cables UK Guideline No 6: Proximity of Offshore Renewable Energy Installations & Submarine Cable Infrastructure in UK Waters ("**the Guidelines**") are prescriptive as to required distances between the apparatus of neighbouring off shore infrastructure projects. Rather, the Guidelines are in fact intended to be a set of recommendations that developers of those projects should consider in project implementation in order to ensure risk is as low as reasonably practicable ("ALARP").
- 2.2 In practice, the Guidelines must support wider planning policy to deliver renewable energy projects efficiently and effectively applying the ALARP principle, and as such the Guidelines should not be interpreted in a way that might have the effect of sterilising the limits of any DCO. In this context the Applicant refers to the emphasis that NPS EN-1 (2011) places on the critical need for renewable energy; the Critical National Priority status for offshore wind set out in NPS EN-3 (2023); and the 50 GW by 2030 target for offshore wind set out in the British Energy Security Strategy (2022).

3. Subsea Cables UK Guideline No 6: Proximity of Offshore Renewable Energy Installations & Submarine Cable Infrastructure in UK Waters ("**the Guidelines**") – Aquind Position Statement

- 3.1 The Aquind Position Statement cites the Guidelines as a basis upon which to prescribe separation distances in the Co-operation Agreement. The Applicant would note the following statements in the Disclaimer and in the Executive Summary of the Guidelines:

"It is the intention of this document to give guidance and to facilitate discussions between effected [sic] parties, but it is not intended to replace such discussions, nor is it intended to require any affected party to behave in a certain way or remove the right of any such party to take its own commercial decisions in relation to any of the issues raised in this document."

"The Guidelines are not intended to provide a prescriptive solution on proximity but, in section 3, offer some guidance for indicative separation distances that are intended as a starting point for Stakeholder discussions."

- 3.2 Aquind's Position Statement proceeds on the basis that a 'conservative approach should instead be taken' and that agreement would be required where 'any works are within the scope of the distances detailed in the Guidelines or otherwise shown to be required to accommodate safe potential operations' (paragraph 2.9 of Aquind Position Statement). That is patently an attempt to rewrite the Guidelines and to accord them a binding status which they do not purport to carry (indeed, to the contrary as made clear at paragraph 2.1 above).

3.3 Aquind's Position Statement assumes a worst case scenario of 1000m within which Proximity Agreements will be required. This is in excess of the combined recommended hazard zone of 250m and working zone of 500m (Guidelines, section 3), and is based on an anchored barge being used for repairs to the Aquind cable. In addition, the modified definition of "Proximity Agreement" that has been introduced by Aquind, brings the risk of veto over the location of Rampion 2 WTGs (see paragraph 5 below). Adopting the worst case scenario in this way and applying it as the basis for the Co-operation Agreement, carries the unacceptable risk for the Applicant that it will be prevented from constructing WTGs within the entire of the 1000m based on possible future maintenance of the subsea cable.

4. Separation Distance – Applicant's position

4.1 The Guidelines categorically does not prescribe fixed separation distances, nor does it encourage worst case scenario assessment. Rather, it is clear on the following recommendations (Guidelines, section 4):

4.1.1 Early engagement by the respective parties "*proactively and with open minds*" to achieve As Low As Reasonably Practicable ("ALARP") risk levels (noting that it should be appreciated from the outset that no activity is ever entirely free from risk).

4.1.2 A generic set of limiting distances cannot be derived for all cable/ wind farm proximity scenarios without recourse to a large number of caveats and exceptions.

4.1.3 Safe separation is required between existing submarine cables, wind turbine generators ("WTG") and other offshore windfarm ("OWF") structures to ensure that continuance of reasonable, timely and cost effective availability to maintain both the existing and newly installed assets.

4.2 The 'hazard zone' and 'working zone' discussed in section 3 of the Guidelines are intended **as a starting point for discussion**. Aquind propose a 1000m area of restriction from its DCO limits, which is not reasonable or justified and is not accurate based on those starting points. The Applicant submits that it is reasonable to assume for the purposes of the 'restriction zone' that the repairs might be undertaken by, for example, a DP vessel and that separation distances should be calculated on that basis.

4.3 The Applicant's position is that an appropriate separation distance (excluding necessary cable crossings) between the Proposed Development and the Aquind Order limits is 500 metres. Following a recent technical meeting with Aquind, in an effort to reach agreement on the point, the Applicant put forward 500m as the proposed separation distance in compromise from its previous position of 250m; which based on experience and previous projects was considered appropriate and reasonable. The Applicant has offered this compromise position in recognition of Aquind's requirement for the reference to the Guidelines.

4.4 The 500m separation distance put forward by the Applicant has been derived from the following factors:-

4.4.1 The recommend "starting point" of a 250m hazard zone and 500m working zone from the subsea cable. Aquind limits are 500m and the cable will sit within those limits.

4.4.2 In practice the separation distance between the respective projects' infrastructure is likely to be greater than the separation zone provided for in the Co-operation Agreement, as the separation distance in the Agreement is calculated by reference to the Aquind Order limits, rather than the actual location of Aquind cables within the Order limits.

4.4.3 Based on paragraph 4.4.2, and the need to balance the importance of delivering renewable energy through off-shore windfarms the Applicant considers that it is

reasonable to 'bake-in' the recommended 250m hazard zone into Aquind limits, thus delivering the recommended 750m separation distance recommended in the Guidance.

- 4.5 The Applicant has factored in the following considerations in assessing the appropriate separation distance:
- 4.5.1 The current cable lay and repair vessel sizes, in particular it being assumed that the maximum length of vessel used for completing works on the Aquind cables will be 150 metres would not warrant any increased separation distance.
 - 4.5.2 The safe distances required between the Rampion 2 offshore wind infrastructure and Aquind infrastructure will be driven by future operations and repairs to the respective infrastructure, rather than for construction, and in that regard that Aquind will install the cable works and make any future repairs using DP2 vessels (the Applicant deals with Aquind's suggestion of an anchored barge at section 3.3 above).
 - 4.5.3 Its experience of similar proximity agreements with other owners and operators of subsea cable infrastructure, including electricity connector projects.
- 4.6 The Applicant's position that 500m is a safe distance is based on the recommendations in the Guidelines, the extent of the limits, and the critical need to balance Aquind's demands against the importance that the Wind Farm deliver optimal capacity in line with National policy. To provide for possible veto within the zone of 1000m would be in conflict with the urgent need for renewable energy set out in the paragraph 2.2 above. Bearing in mind that a single rotation of the proposed turbines could power a household for over 2 days, the reduction of any turbines installed would have a significant effect on generating capacity over the 30 year lifetime of the Proposed Development. The Applicant cannot accept that the location of WTGs within 1000m of the Aquind limits should be subject to Aquind agreement. This would introduce significant risk to the operational capacity of the Rampion 2 Wind Farm.

5. Proximity Agreement

- 5.1 The question of the appropriate separation distance between Aquind infrastructure and the Proposed Development is related to the appropriate proximity within which the parties are required to a Proximity Agreement to regulate the interface of respective assets. A Proximity Agreement would among other matters set out:
- 5.1.1 details of how proximate work would be carried out by each party;
 - 5.1.2 method statements provided by the party carrying out the work and accepted by the other party as suitable prior to work proceeding;
 - 5.1.3 matters concerning the future maintenance requirements of both assets which may include the method by which notification of operations by each party is given to the other.
- 5.2 The Applicant recognises Aquind's concerns regarding future operation and has accepted the 1000m distance on a qualified basis. That basis is, in order to ensure that there is no risk of unnecessary sterilisation of the Rampion 2 Order Limits within this area beyond the 500m zone, to take the 1000m distance as a trigger point for the requirement for a Proximity Agreement on the terms set out in paragraph 5.4 below. The Applicant does not consider it in the spirit of a Co-Operation Agreement to provide for a power of potential veto by one party or the other, over the location of respective infrastructure, and it is clear that this is not the intention in the Guidelines which states that:

"it is of utmost importance that all Stakeholders understand and appreciate each other's requirements and safety issues".

- 5.3 The Guidelines include (paragraph 5.1) a clear recommendation of the key elements that should be included in a Proximity Agreement. The Applicant has sought to ensure that the Co-Operation Agreement refers to this definition. Aquind seek to add to that definition that the parties agree proximity distances. The impact of this addition on the Applicant's ability to construct the windfarm would be as follows:
- 5.3.1 Requirement, as a pre-requisite to construction of any part of the Rampion 2 scheme within a 1000m area from the Aquind limits, to agree with Aquind the location of WTGs;
 - 5.3.2 Whilst the parties are required to use all reasonable endeavours to agree, Aquind has proposed that there are grounds where agreement may be withheld including operational reasons, which presents an unacceptable risk to Rampion 2 of seabed sterilisation.
- 5.4 The Applicant submits that this approach proposed by Aquind is not reasonable, nor is it in line with the Guidelines. Furthermore, it would expose the Proposed Development to a serious risk of unnecessary and unjustified sterilisation of a large area of its Order limits. In order to remedy this approach, the Applicant has put to Aquind the following (to be documented in the Co-operation Agreement):
- 5.4.1 Keep the definition of Proximity Agreement as set out in the Guideline;
 - 5.4.2 Include a trigger of infrastructure within 1000m of Overlap Area zone applies for entering a Proximity Agreement;
 - 5.4.3 No Rampion 2 WTGs will be constructed within 500m from Overlap Area;
 - 5.4.4 In the zone from 500m to 1000m from the Overlap Area the Parties agree that a Proximity Agreement will apply and risk will be mitigated through appropriate method statements. Aquind will not refuse to enter into a Proximity Agreement within this zone and cannot object to the location of Rampion 2 WTG within this area.
- 5.5 The approach set out in paragraph 5.4 above is a reasonable position whereby beyond 500m from the Aquind Order Limits, the operations of the respective projects are subject to the Proximity Agreement however there is no power of veto by Aquind on the actual location of the WGT within that area. This is important because the ability to optimise the location of the WTG affects the overall generating capacity of the wind farm. The respective location of the assets themselves is not likely to be a matter of contention. It is the manoeuvrability of vessels during the construction and operational (repair) stages of the respective projects that introduces potential risks which. During discussions, Aquind has not been able to commit to the type of vessel that will be used during these stages. Whilst the Applicant appreciates this position to a degree, it cannot agree to terms that effectively allow Aquind to future proof its options at the expense of the ability to optimise the layout of the Rampion 2 project to maximise renewable energy generation. To do so would be to compromise the operational capacity of the windfarm at the expense of preserving Aquind's options on vessel repair type (as is the case in the consideration of worst case scenario in Aquind's Position Statement). This is a matter that should be dealt with in method statements at the time (as is recommended in the Guidance) rather than introducing a power of veto.
- 5.6 The Applicant has agreed that it will not place WTG 500m from the Aquind Order Limits. It is recognised that Array Cables will cross the Aquind Order Limits by 'necessary crossings' regulated by Crossing Agreements. The Applicant considers 500m is a reasonable, safe distance based on industry practice and experience. This is not a departure from the Guidance. Rather, it is a starting point for discussions that will then put into practice the recommendations in the Guidance to work together to achieve co-existing projects with ALARP risk to respective operations.

6. **Practical examples of proximate infrastructure**

- 6.1 RWE, one of the shareholders in the Applicant and the party leading the development of the Rampion 2 project, has extensive experience of entering into crossing and proximity agreements with owners and users of subsea cable infrastructure, including other electricity interconnector projects. The example below provides an illustration of the approach taken on another recent offshore wind project which interacts with existing or proposed offshore subsea cable projects to ensure the safe, efficient and effective operation of respective infrastructure. This example illustrates that the Applicant's approach is consistent with what is commonly accepted in the industry.

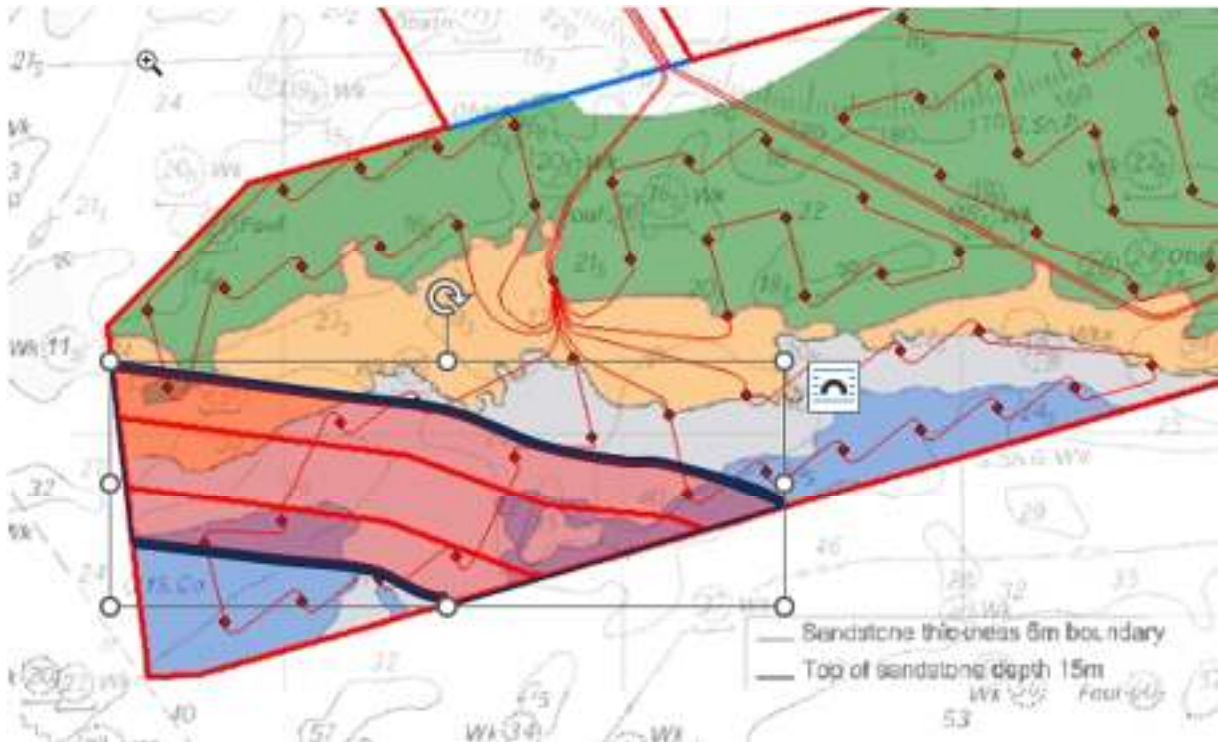
Recent case study example:

In respect of wind farm cables proposed to be installed in proximity to a proposed electricity interconnector project, the wind farm project agreed a minimum 250m separation distance with a 500m notification zone where witnessing/RAMs review would be needed. These separation distances rely on both projects using DP vessels, but this would be expected and a DP vessel would usually always be preferred

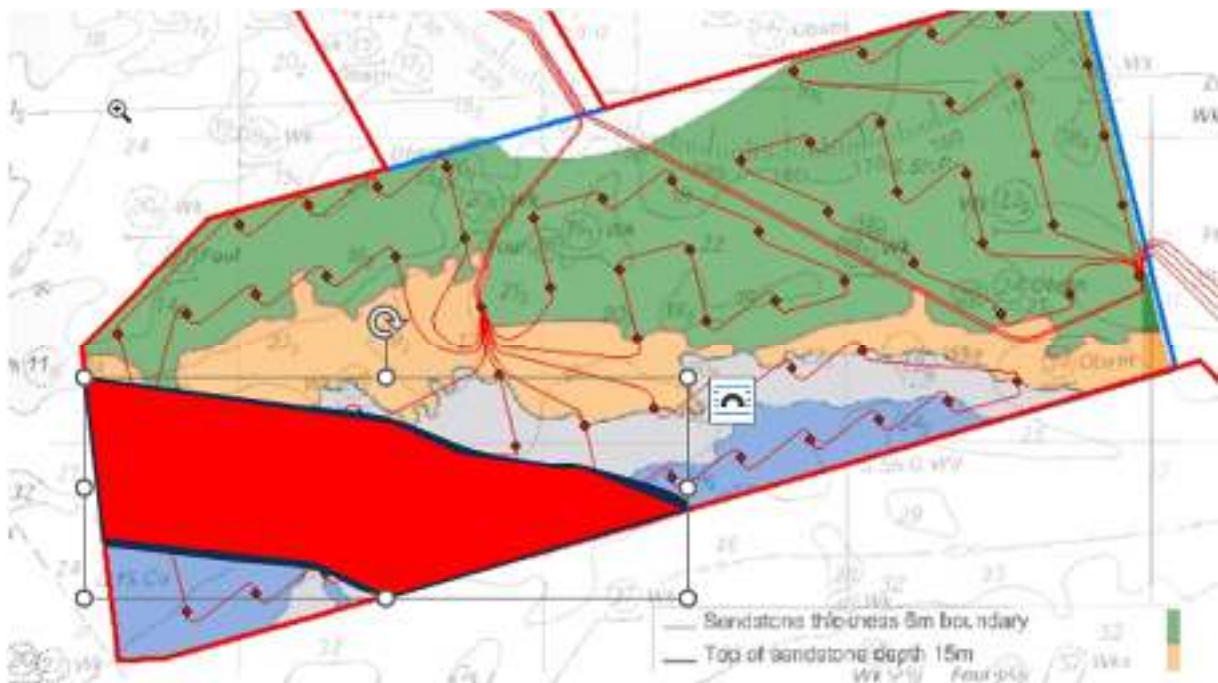
In addition the project agreed a 250m clearance zone from the subsea cable in which area no wind turbine structure could be erected. There was also a 150m clearance zone for jack-up vessels

7. **Conclusions**

- 7.1 The Applicant's position is that a required separation distance of 1000m is not justified on safety or operational grounds for the reasons set out in this note. Furthermore, such a separation distance would effectively sterilise that area of Rampion 2 Order limits and prejudice the Applicant's ability to deliver the Rampion 2 Scheme effectively and efficiently and in line with the government's objectives for new offshore wind capacity by 2030.
- 7.2 Aquind has submitted to the ExA a set of draft Protective Provisions that replicate the terms of the draft Co-Operation Agreement. The Applicant submits that the Co-Operation Agreement should reflect the considerations in this Supplementary Technical Note and as such include the qualifications in paragraph 5 above. Should this be the case, the Protective Provisions would not be required. It follows that should the Protective Provisions be included in the DCO, the considerations of this Note should be accounted for. An amended form of Protective Provisions is at Annex 2 to this Note.



The above figure shows the difference between the Applicant's 250m separation distance and Aquind's 1000 metre separation distance



The above figure shows the extent of seabed within the Rampion 2 DCO Order limits that would be subject to Aquind's proposed 1000 metre separation distance within which no turbines could be erected without Aquind's consent.

ANNEX 1

COOPERATION AGREEMENT

[HSF Amends 22.05](#)[ESI amends 03/06/HSF](#)[ESI amends 14/05/2024](#)
[ESI amends 06/09/06/2024](#)

DATED _____ 2024

(1) AQUIND LIMITED

(2) RAMPION EXTENSION DEVELOPMENT LIMITED

CO-OPERATION AGREEMENT
relating to the AQUIND Interconnector
Order 202[X] and the Rampion 2 Offshore Wind
Farm Order 202[X]

Herbert Smith Freehills LLP

THIS AGREEMENT is made on 2024
BETWEEN:

- (1) **AQUIND LIMITED** (company registration number 06681477) whose registered office is at 5 Stratford Place, London, England, W1C 1AX (Company number 06681477) ("**AQUIND**"); and
- (2) **RAMPION EXTENSION DEVELOPMENT LIMITED** of Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire, England, SN5 6PB (Company number 12091939) ("**RED**")

WHEREAS:

- (A) On 14 November 2019 AQUIND submitted the application for the AQUIND Order to the Secretary of State for Business, Energy & Industrial Strategy in respect of the AQUIND Works and following completion of examination on 8 March 2021 and subsequent consideration of the application by the Secretary of State is awaiting a decision on whether the AQUIND Order will be granted.
- (B) It is intended that AQUIND will be the undertaker for the purposes of the AQUIND Order once granted. AQUIND intends to construct, operate and maintain the AQUIND Works pursuant to the AQUIND Order.
- (C) On 10 August 2023 RED submitted the application for the RED Order to the Secretary of State for Energy Security and Net Zero. The examination of the application for the RED Order commenced on 6 February 2024.
- (D) It is intended that RED (or the "RED Transferee") will be the undertaker for the purposes of the RED Order once granted. RED intends to construct, operate and maintain the RED Works pursuant to the RED Order.
- (E) AQUIND and RED acknowledge the need to co-operate with one another in connection with ensuring the delivery of both the AQUIND Works and the RED Works where there is actual and the potential for interface between those works.
- (F) The parties are entering into this Agreement which is to be entered into as a deed on the understanding that AQUIND and RED will perform the covenants contained herein.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement (which includes the recitals to it) the following words and expressions have the following meanings unless the context otherwise requires:

"AQUIND Pre-Construction Information"	means the documentation and information required in accordance with paragraph 4 (1) of Part 2 of Schedule 15 to the AQUIND Order, as amended or agreed with the MMO;
"AQUIND Information"	Post-Construction means the cable burial management plan required in accordance with paragraph 11 of Part 2 of Schedule 15 to the AQUIND Order;
"AQUIND Order"	means The AQUIND Interconnector Order 202[X] as it is made by the Secretary of State;

Commented [HSF2R1]: The pre-construction information for each project has been taken from what is required by the respective marine licences to be submitted to the MMO for each project. The rationale for this approach is each party only has to provide for approval what they will otherwise be submitting to the MMO, so will not need to produce 'additional' information. We do not consider this approach to be controversial.

Commented [ES3R1]: Noted. Definitions now consistent and take into account potential amendments/ adjustments as agreed with MMO.

Commented [ES1]: See comment below: pre-construction information should be reciprocal: for discussion.

"AQUIND Order Limits"	has the same meaning as is given to the term 'Order limits' in the AQUIND Order;
"AQUIND Works"	means Work No. 7 as described at paragraph 3 and any associated development as described at paragraph 4 of Part 1 of Schedule 15 to the AQUIND Order in so far as such works are within the Overlap Area;
"Array Cables "	means the network of offshore subsea Transmission Cables connecting Wind Turbine Generators to each other and to the Offshore Substations comprised in the RED Works;
"Cable Protection"	means measures for the protection of Transmission Cables and auxiliary cables from physical damage and exposure including but not limited to concrete mattresses and/or rock placement, bagged solutions filled with stone, rock or gravel, grout, concrete and other materials and protective shells or sheaths;
"Commencement"	means: <ul style="list-style-type: none">a) in respect of the AQUIND Works the first carrying out of any licensed marine activities comprised within those works, excluding any non-intrusive pre-construction surveys;b) in respect of the RED Works the first carrying out of any licensed marine activities comprised within those works, excluding any non-intrusive pre-construction surveys;
"Confidential Information"	means information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and includes information whose disclosure would or would be likely to prejudice the commercial interests of any persons trade secrets, intellectual property rights and know-how and all personal data and sensitive personal data within the meaning of the Data Protection Act 2018;
"Crossing Agreement"	means any agreement entered into by the parties pursuant to clause 5.1, for: <ul style="list-style-type: none">a) the crossing of the AQUIND Works by Array Cables to ensure the Array Cables do not give rise to interference with the operation or Maintenance of the AQUIND Works; or

Commented [ES4]: Suggest that this is captured in the definition of Transmission Cables as presumably they will be laid together, and auxiliary cables is not defined

Commented [HSF5R4]: The amendments to this clause are not accepted. The definition has been taken from and mirrors the Rampion 2 DCO. It is in that definition in the DCO that 'auxiliary cable' is not defined. We can only assume that the DCO submitted to the Planning Inspectorate is accurate to describe the proposed Rampion 2 Works, and this is why we have drawn relevant definitions from it into this Agreement. If it is not, please confirm the updates that you will be making to the DCO, such that they can be mirrored in this Agreement as necessary and addressed in the SoCG between the parties that is to be submitted.

- b) the crossing of the Array Cables by the AQUIND Works to ensure that the cables or other elements comprising the AQUIND Works or any part of them do not give rise to interference with the operation or Maintenance of the RED Works; or
- c) to manage the safe interface of the installation of subsea cable crossings as part of the RED Works and the AQUIND Works for their mutual protection including in the event the AQUIND Works have not yet been constructed in respect of the crossing by the Array Cables of any area where the AQUIND Works may be constructed in accordance with the AQUIND Order to ensure the Array Cables do not prevent the construction of the AQUIND Works and will not give rise to interference with the operation or Maintenance of the AQUIND Works once constructed;

"Export Cable"

means Transmission Cables connecting the Offshore Substations to works which are landwards of mean high water springs authorised by the RED Order comprised in the RED Works;

"Maintenance"

means maintain, inspect, upkeep, repair, adjust, alter, improve, preserve and further includes remove, reconstruct and replace any part of the AQUIND Works and the RED Works (as is relevant) and "Maintain" and similar terms shall be construed accordingly;

"Necessary Crossing"

means any point at which an Array Cable comprised in the RED Works cross the AQUIND Order Limits;

"Proximity Agreement"

means any agreement entered into by the parties pursuant to clause 5.2-3 setting out the technical and commercial terms on which the RED Works and the AQUIND Works will be located and operated in proximity to one another including (but not limited to):

- a) clauses to define the liabilities and rights of both parties;
- b) exclusion/inclusion of consequential losses;
- c) details of financial compensation arrangements for each party where

Commented [ES6]: For discussion: there is a significant degree of overlap between the Crossing Agreement and this Co-operation Agreement. Parties to ascertain what the Crossing Agreement is to include and explore whether it would be appropriate to (i) embed relevant provisions in this Agreement of (ii) a standard form (if necessary two separate standard forms depending on which project advances first) is appended to this Co-operation Agreement.

It would not be appropriate that RED be required to enter into a Crossing Agreement where AQUIND have not yet commenced works/ laid cables but the provisions as to Crossing Agreement would be relevant going forward in any interface.

Commented [HSF7R6]: There is no intention on AQUIND's part to agree the form of a Crossing Agreement now. There is not sufficient information to do so, and it is more appropriate to do this once the relevant detail is available. This will be after DCO grant. On this basis, this Agreement will capture the need for such Agreements, and require the parties to work together to enter into those in the future.

The crossings of the AQUIND cables are permitted by the RED works, so those crossings need to be designed and RED works constructed so as not to prevent AQUIND construction, including where the AQUIND works have not yet been delivered. On this basis the provisions needs to be as previously drafted, but we have sought to incorporate amendments where identified to be appropriate to protect RED works.

Commented [ES8R6]: Provision drafted to ensure reciprocity. New clause [xx] sets out reciprocal provision for Crossing Agreement which should not be required to be entered into until the construction of one or other project has commenced (i.e. where there is an interface).

applicable relating to specific arrangements;

- ~~d) agreement on proximity limits informed by the Proximity Guidelines and which may include for the proximity limits to be modified up or down by agreement depending on the method statements submitted and agreed;~~
- ~~e) indemnity provisions as appropriate to regulate respective liability in construction interface;~~
- ~~f) clearly defined limits of the area to which the Proximity Agreement applies;~~
- ~~g) details of how proximate work would be carried out, to include method statements provided by the party carrying out the work and accepted by the other party as suitable prior to work proceeding;~~
- ~~h) future maintenance~~ Maintenance requirements of both assets which may include the method by which notification of operations by each party is given to the other;
- ~~i) definition of the expiry of the Proximity Agreement (for example, at the decommissioning of one or other of the relevant assets);~~
- ~~j) provision of representatives from one party to the other party's operations and their rights, obligations and limitation of their authority;~~

"Proximity Guidelines"

means the European Subsea Cables Association Guideline No.6 – The Proximity of Offshore Renewable Energy Installations & Subsea Cable Infrastructures dated August 2014 (or as may be amended or replaced from time to time);

"Offshore Substation"

means a structure above LAT and attached to the seabed by means of a foundation, with one or more decks containing

- a) electrical equipment required to switch, transform, convert electricity generated at the Wind Turbine Generators to a higher voltage ; and
- b) accommodation, storage, workshop auxiliary equipment, and facilities for operating, maintaining

Commented [HSF9]: The deletion of this is not accepted. The Guidance from which the contents of the Proximity Agreement are taken for this definition provides:

When site-specific proximity limits have been agreed, a bilateral proximity agreement with accompanying method statement can then be drafted based on a standard template and these guidelines. Such a proximity agreement should be based on the format and spirit of existing cable crossing and proximity agreements in common use throughout both industries, where appropriate.

It is recommended that where possible, finalisation of wind farm layout planning should not be undertaken until such time as Proximity Agreements and the requirements therein have been properly reviewed, discussed and agreed at least in principle, with the wind farm developer, the cable owner and any affected maintenance providers.

Clearly site specific proximity limits need to be agreed, and this limb provides for this. There is not anything in this Agreement which states that this must be 1000m, the Proximity Limits are a point for future discussion and agreement, and that discussion will have regard to and be informed by the Proximity Guidelines and technical project information.

	and controlling the substation or Wind Turbine Generators, comprised in the RED Works;
"Offshore Substation Interconnector Cable"	means Transmission Cables connecting Offshore Substations comprised in the RED Works;
"Overlap Area"	means the overlap shown shaded [XXX] appended at Appendix 1 to the Agreement; ¹
"RED Order"	means The Rampion 2 Offshore Wind Farm Order 202[X] as it is made by the Secretary of State;
"RED Pre-Construction Information"	means the documentation and information required in accordance with paragraph 11 of Part 2 of Schedule 11 and/or Schedule 12 to the RED Order, as amended or agreed with the MMO;
"RED Post-Construction Information"	means the post-construction monitoring plan, the updated cable monitoring plan, the report setting out details of the cable protection and the close out report, as required in accordance with paragraphs 18, 20, 22 and 24 of Part 2 of Schedule 11 and/or Schedule 12 to the RED Order;
"RED Works"	means <ul style="list-style-type: none">- Work Nos. 1 and 2 and any associated development or ancillary works in connection with those works described at paragraph 3 of Part 1 of Schedule 11 to the RED Order; and- Work Nos. 3 and 4 of and any associated development or ancillary works in connection with those works described at paragraph 3 of Part 1 of Schedule 12 to the RED Order in each case in so far as such works are within the Overlap Area;
"Safety Zone"	means a safety zone for the purposes of the Energy Act 2004;
"Secretary of State"	means the Secretary of State for Energy Security and Net Zero (or any such successor Secretary of State performing that function);

Commented [HSF14R13]: See comments above, which note how this reflects the relevant pre-construction information in the respective marine licences.

Commented [ES10]: See comment below: pre-construction information should be reciprocal: for discussion.

Commented [HSF11R10]: The pre-construction information for each project has been taken from what is required by the respective marine licences to be submitted to the MMO for each project. The rationale for this approach is each party only has to provide for approval what they will otherwise be submitting to the MMO, so will not need to produce 'additional' information. We do not consider this approach to be controversial.

Commented [ES12R10]: Noted. Definitions now consistent and take into account potential amendments/adjustments as agreed with MMO.

Commented [ES13]: The Pre-Construction Information for each party should be reciprocal.

¹ HSF Note: This will be the extent of the AQUIND Order Limits within the Rampion Order Limits. It is also intended the co-ordinates will be included for accuracy.

"Transmission Cable"	means any offshore cable circuits for the transmission of electricity and communications and includes direct lay cables and/or cables pulled through cable ducts or under protective covers in connection with those comprised in the RED Works;
"Wind Turbine Generators"	means a structure comprising a tower, rotor with three blades connected at the hub, nacelle, transition piece and ancillary electrical and other equipment which may include J-tube(s), transition piece, access and rest platforms, access ladders, boat access systems, corrosion protection systems, fenders and maintenance Maintenance equipment, helicopter landing facilities and other associated equipment, fixed to a foundation to be constructed pursuant to Work No. 1 comprised in the RED Works; and
"Working Day"	means any day apart from Saturday, Sunday and any statutory bank holiday on which clearing banks are open in England for the transaction of ordinary business.

1.2 In this Agreement, unless stated otherwise:

- 1.2.1 reference to the masculine feminine and neuter genders shall include other genders;
- 1.2.2 reference to the singular include the plural and vice versa unless the contrary intention is expressed;
- 1.2.3 references to natural persons include firms, companies, corporations, and vice versa;
- 1.2.4 headings in this Agreement are for reference purposes only and shall not be taken into account in its construction or interpretation;
- 1.2.5 a reference to a clause, sub-clause, paragraph, sub-paragraph, Schedule, recital or appendix is (unless the context otherwise requires) a reference to the relevant clause, sub-clause, paragraph, sub-paragraph, Schedule, recital or appendix to this Agreement;
- 1.2.6 the recitals, table of contents and headings in this Agreement are for convenience only and shall not affect its construction, interpretation or otherwise have any binding legal effect;
- 1.2.7 reference to "the parties" shall mean the parties to this Agreement and reference to a "party" shall mean any one of the parties;
- 1.2.8 references to "notice" shall mean notice in writing;
- 1.2.9 references to "including" shall mean "including without limitation or prejudice to the generality of any description, defining terms or phrase preceding that word" and the word "include" and its derivatives shall be construed accordingly;
- 1.2.10 the Interpretation Act 1978 shall apply to this Agreement; and

- 1.2.11 unless otherwise provided for references in this Agreement to any statute or statutory provision include references to:
- (A) all Acts of Parliament and all other legislation having legal effect in the United Kingdom as enacted at the date of this Deed;
 - (B) any orders, regulations, instruments or other subordinate legislation made or issued under that statute or statutory provision; and
 - (C) in each case shall include any re-enactment thereof for the time being in force and any modifications or amendments thereof for the time being in force, and
- 1.2.12 references to articles of the AQUIND Order are references to the articles of the draft Order submitted to the Secretary of State on 23 May 2023 and shall be read so as to reflect the relevant articles of the AQUIND Order as made by the Secretary of State.
- 1.2.13 references to articles of the RED Order are references to the articles of the draft Order submitted to the Planning Inspectorate acting on behalf of the Secretary of State on 18 January 2024 and shall be read so as to reflect the relevant articles of the RED Order as made by the Secretary of State.

2. LEGAL EFFECT AND CONDITIONALITY

Save for clauses 1, this clause 2, 7, 8, 9, 10 and 12 to 17 which shall take effect at the date of this Agreement, the provisions of this Agreement are conditional upon the coming into force of the AQUIND Order or the RED Order following the making of either of those by the Secretary of State.

~~If either the AQUIND Order or the RED Order is:~~

~~not made by the Secretary of State;~~

~~is rejected by Parliament following special parliamentary procedure; or~~

~~is made but is then subsequently quashed or ceases to be of effect~~

~~2.1 and provided that any judicial review or statutory challenge procedure in respect of any such decisions has been exhausted then this Agreement shall terminate and the parties release from any obligation under it.~~

3. COVENANTS OF AQUIND

3.1 AQUIND Covenants with RED as follows:

- 3.1.1 not less than 6 months prior to the Commencement of any part of the AQUIND Works to submit to RED and to use all reasonable endeavours to agree with RED the AQUIND Pre-Construction Information in respect of such part of the AQUIND Works, in the interest of not adversely impacting the construction of the RED Works or the operation and Maintenance of the RED Works once constructed; and
- 3.1.2 within not more than 2 months from the date on which the AQUIND Pre-Construction Information is submitted to RED (or such longer period as may otherwise be agreed by the parties in their absolute discretion) and where the AQUIND Pre-Construction has not been agreed within 2 months from the date on which the AQUIND Pre-Construction Information is submitted to RED (or such longer period as may otherwise be agreed by the parties in their absolute discretion) either party may refer the matter to be determined by an Expert in accordance with Clause 8; and
- 3.1.3 AQUIND shall not commence the AQUIND Works or such part of the AQUIND Works (as is relevant in the circumstances) until the AQUIND Pre-Construction Information for the AQUIND Works or the relevant part thereof is agreed with RED or has been determined by the Expert; and

Commented [SO15]: Could also address Umair's later comment re termination events here that the protections for the other project cease in the event that the period for commencing that project under the respective DCO has ceased without the development having been commenced.

Commented [HSF16R15]: Now addressed in the Termination provisions.

Commented [HSF17]: See Clause 12 which provides the termination provisions.

Commented [ES18]: Include a covenant not to apply for a disposal site outside the AQUIND Order limits without first securing the consent of RED where the proposed disposal site falls within the RED Order limits

Commented [ES19R18]: See new clause 3.2.2

Commented [ES20]: This provision will need to be amended for both Aquind and RED to reflect the proposals in each draft DCO for the pre-construction information to be submitted to the MMO for approval no later than 4 months prior to the intended commencement date. Ideally the pre-construction information will be agreed prior to submission to the MMO. Provision will also need to be made for the parties to agree any amendments to the agreed Pre-Construction Information if so required in accordance with an approval granted by the MMO.

Commented [ES21]: Suggest that this clause should have a time reference to it - may depend on the approach taken to the time for provision of information for agreement, ie if this is to be agreed prior to submission to the SoS, then this provision will need to accommodate reference to the need for RED to submit the information to the MMO 4 months prior to the intended commencement date. The same will apply to the reciprocal arrangements for RED's covenants

Commented [ES22]: The Agreement need to provide for the scenario where the parties do not agree. As currently drafted, after the expiry of the 90 day period AQUIND simply then go ahead and construct their works notwithstanding that RED considers that it may adversely impact the construction of the RED Works or the use and operation of the RED Works once constructed? Options are (i) provide for ability to comment on pre-construction information to make amends/ impose conditions or (ii) some form of expert determination provision in the event that agreement is not reached.

Commented [HSF23R22]: The matter would go to dispute resolution if there is not agreement. Drafting now included for a timescale for agreement express reference to referral to dispute if not agreed.

And it is not the case that AQUIND (or RED) can just go ahead and construct after 90 days, as is suggested above. Construction cannot start until the pre-construction information is agreed.

Commented [ES24R22]: Principle agreed. Wording "where constructed first" removed as the concept of ensuring safe interface etc should apply through operation and maintenance on both sides.

- 3.1.4 thereafter AQUIND shall carry out the construction of the AQUIND Works in accordance with the AQUIND Pre-Construction Information as is agreed between the parties or as determined by the Expert (and as may be varied by agreement between the parties from time to time; and
- 3.1.5 where received from RED pursuant to clause 4, to use all reasonable endeavours to agree the RED Pre-Construction Information with RED in the interest of not adversely impacting the construction of the AQUIND Works or the operation and Maintenance of the AQUIND Works once constructed.
- 3.2 AQUIND further covenants with RED:
- 3.2.1 to not install the AQUIND Works outside of the boundary of the Overlap Area nor undertake any repair to the AQUIND Works which involves any part of the AQUIND Works or repair bight being installed outside of the boundary of the Overlap Area without the prior approval of RED (not to be unreasonably withheld or delayed and may be given subject to reasonable conditions);
- 3.2.2 not to apply for a disposal site in connection with the AQUIND Works outside the AQUIND Order Limits without first securing the consent of RED where the proposed disposal site falls within the RED Order Limits;
- 3.2.3 to provide RED with:
- (A) not less than 10 Working Days prior written notification of the Commencement of the AQUIND Works;
 - (B) notification of the completion of construction of the AQUIND Works as soon as is reasonably practicable and not later than 48 hours of completion of construction; and
 - (C) not less than 5 Working Days' notice of any planned Maintenance works to the AQUIND Works.
- 3.2.4 to provide to RED the AQUIND Post-Construction Information as soon as is reasonably practicable following and in all cases within not more than four months of the completion of construction of the AQUIND Works.
- 3.2.5 to Maintain the AQUIND works in good order such that they do not give rise to any damage to the RED Works by reason of non-repair.
- 3.2.6 not less than 90 days prior to the decommissioning of any part of the AQUIND Works to submit to RED and to use all reasonable endeavours to agree with RED information relevant to how the decommissioning works will be undertaken and confirming how those works will not adversely impact the RED Works and not to commence the decommissioning of any part of the AQUIND Works until the information relevant to how the decommissioning works will be undertaken is agreed with RED and thereafter to carry out the decommissioning works in accordance with the agreed Information.
- 3.2.7 where received from RED to use all reasonable endeavours to agree with RED as soon as reasonably practicable the decommissioning information for the RED Works in the interest of confirming how those works will not adversely impact AQUIND Works.
- 3.2.8 to allow RED and representatives of RED and those employed on their behalf to watch and inspect the construction, Maintenance and decommissioning of the AQUIND Works.
- 3.2.9 to withdraw any and all objections to the RED Order in writing within 5 working days of the date of this Agreement and to provide a copy of that withdrawal to the

Commented [HSF25]: This is not the balance of considerations, what will be needed to protect the AQUIND works will be required irrespective of impact on RED programme. The same position applies for RED.

Commented [HSF26]: This is not accepted. AQUIND will construct and repair within its Order Limits, as previously agreed. We have always been clear vessels are not also restricted to those when carrying out operations within them. AQUIND will comply with relevant safety guidance, and the Proximity Agreement will ensure this. Whilst we note there will be a need to co-ordinate vessels during construction, that will be provided for by 3.1.1 and 3.1.5. This is related to where RED works can be in proximity to the Order Limits, and that is driven by safety requirements in connection with operations with the AQUIND Cables. AQUIND is seeking to apply industry guidance and standards to ensure safe operations for each project.

Commented [ES27]: The minimum distance for laying of the AQUIND cable from AQUIND Limits is required to ensure that cable repair bight is within those limits. See Technical Note: Proximity of AQUIND AS-Build Assets to AQUIND DCO Boundary.

Refer to plan to clarify that the restriction applies only to the side of the Overlap Area where the works interface with the RED Works.

Commented [ES28]: These notification periods do not seem sufficient - particularly if the Parties have not reached consensus over the Pre-Constructon Information. We suggest that the notification is for the intended commencement date, ie when the pre-construction information is due to be submitted to the MMO. This notification may need to be given 6 months before commencement to allow time for agreement of the pre-... [1]

Commented [HSF29R28]: This comment has now been addressed.

Commented [ES30]: RED to confirm time period

Commented [HSF31R30]: This time period is suggested as it provides a reasonable period of time for it to be produced and submitted to and approved by the MMO. Could instead state once approved by the MMO?

Commented [ES32]: Suggest that this obligation is extended to include obligation on AQUIND to provide RED upon request by RED (acting reasonably) where AQUIND are maintaining their works in the vicinity of RED Works, copies of method statements etc. for approval before ... [2]

Commented [HSF33R32]: This would only be applicable where there is a crossing, and there will be separate crossing agreements governing that. So this suggested addition is not identified to be necessary.

Commented [ES34]: RED to confirm time frame to which decommissioning works

Commented [HSF35R34]: If you consider this is required, please suggest a process for AQUIND to consider. Otherwise could include "as soon as is reasonably practicable" wording, and/or a timeframe after which the matter is referred to an Expert via the dispute resolution provisions?

RED and to refrain from any further opposition to the RED Order save as authorised by Clause 3.2.10 below.

- 3.2.10 Nothing in this Agreement shall prejudice or affect the right of AQUIND to object to any new or amended provisions of the RED Order that may be introduced after the date of this Agreement which make a material change which is deemed by AQUIND to be prejudicial to the AQUIND Works and/or its obligations in this Agreement.

4. COVENANTS OF RED

4.1 RED covenants with AQUIND as follows:

- 4.1.1 not less than 6 months prior to the Commencement of any part of the RED Works to submit to AQUIND and to use all reasonable endeavours to agree with AQUIND the RED Pre-Construction Information in respect of such part of the RED Works in the interest of not adversely impacting the construction of AQUIND Works or the operation and Maintenance of the AQUIND Works once constructed; and
- 4.1.2 within not more than 2 months from the date on which the RED Pre-Construction Information is submitted to AQUIND (or such longer period as may otherwise be agreed by the parties in their absolute discretion) and where the RED Pre-Construction has not been agreed within 2 months from the date on which the RED Pre-Construction Information is submitted to AQUIND (or such longer period as may otherwise be agreed by the parties in their absolute discretion) either party may refer the matter to be determined by an Expert in accordance with Clause 8; and
- 4.1.3 ~~and~~ RED shall not commence the RED Works or such part of the RED Works (as is relevant in the circumstances) until the RED Pre-Construction Information is agreed with AQUIND or has been determined by the Expert and thereafter RED shall carry out the construction of the RED Works in accordance with the agreed RED Pre-Construction Information as is agreed between the parties or as determined by the Expert (and as may be varied by agreement between the parties from time to time); and
- 4.1.4 where received from AQUIND pursuant to clause 3.1, to use all reasonable endeavours to agree with AQUIND the AQUIND Pre-Construction Information for the AQUIND Works in the interest of not adversely impacting the construction of the RED Works or the operation and Maintenance of the RED Works once constructed.

4.2 RED further covenants with AQUIND:

- 4.2.1 not to place any Wind Turbine Generators, Substations or Transmission Cables comprised in the RED Works within the boundary of the Overlap Area, save for Array Cables in respect of which a Crossing Agreement has been entered into which provides for those Array Cables to cross the Overlap Area;

4.2.2 not to place any Wind Turbine Generators, Offshore Substations or Transmission Cables comprised in the RED Works within:

(A) 500m of the boundary Overlap Area; and

~~4.2.2~~ **1000 metres of the boundary of the Overlap Area or following the construction of the AQUIND Works within 1000 metres of the as-built AQUIND Works unless and until a Proximity Agreement in respect of the relevant Wind Turbine Generator(s), Offshore Substation(s) or Transmission Cables PROVIDED ALWAYS that AQUIND will not refuse to enter, nor delay or unreasonably condition any such Proximity Agreement or a Crossing Agreement in respect of a**

Commented [ES36]: Same comments as per Aquind clause for the majority of the content of this clause save that there is no requirement for seeking consent for approval for disposal sites

Commented [ES37]: Distance not accepted - see technical note

Commented [HSF38R37]: Subject to technical discussions

Commented [ES39R37]: AQUIND confirmed in technical note

Commented [ES40]: Crossing Agreements are addressed in clause 5.1 and 5.2. It is not appropriate to include as an additional covenant on RED as precondition to the laying of the Array Cables. Clause 5 is, rightly, reciprocal.

relevant Array Cable has been entered into in accordance with Clause 5 of this Agreement; and

~~except in the case of a Necessary Crossing, to not to place any Transmission Cable or Export Cable comprising the RED Works within 75 metres of the boundary of the Overlap Area or following the construction of the AQUIND Works within 175 metres of the as-built AQUIND cable (except where otherwise agreed with AQUIND in their absolute discretion).~~

4.2.3

(B)

~~regarding the disposal of any inert material of natural origin and/or dredged material produced during construction drilling or seabed preparation for foundation works and cable installation works undertaken pursuant to the RED Order, not to make any disposal of any inert material of natural origin and/or dredged material produced during construction drilling or seabed preparation for foundation works and cable installation works undertaken pursuant to the RED Order such disposal within 500 metres of the Overlap Area excluding such disposal as is associated with any Necessary Crossing and/or where otherwise provided for in the relevant Crossing Agreement or Proximity Agreement;~~

~~Provided always that AQUIND will not (i) refuse to enter into any such Proximity Agreement; (ii) delay entering into any such Proximity Agreement or (iii) condition any such Proximity Agreement in the context of either clause (A) or (B) that in RED's opinion (acting reasonably) would cause delay to its ability to deliver the RED works; and~~

4.2.4

~~to not make any such disposal within the Overlap Area excluding those associated with any necessary cable crossings; and~~

4.2.5

~~to otherwise consult with AQUIND for the RED Works undertaken pursuant to the RED Order prior to making any disposals within [250XXX] of the Overlap Area/Overlap Area except as may be agreed with AQUIND in their absolute discretion.~~

4.2.6

~~prior to the completion of construction of the AQUIND Works, not to deposit any sediment within [500 metresXXX] of the Overlap Area or within the registered disposal sites with reference WI048 and WI049 within the extent of the AQUIND Order limits except as may be agreed with AQUIND in their absolute discretion.~~

4.2.7

~~following the completion of construction of the AQUIND Works, not to deposit any sediment within [500 metresXXX] of the AQUIND Works or within the registered disposal sites with reference WI048 and WI049 within the extent of the AQUIND Order limits except as may be agreed with AQUIND in their absolute discretion.~~

4.2.8

4.2.4 to provide AQUIND with

- (A) not less than 10 Working Days prior written notification of the Commencement of the RED Works;
- (B) notification of the completion of construction of the RED Works as soon as is reasonably practicable and not later than 48 hours of completion of construction; and
- (C) not less than 5 Working Days' notice of any planned maintenance/Maintenance works to the RED Works.

Commented [ES41]: Distances for discussion in context of AQUIND Technical Response.

Proximity Agreement for discussion.

Commented [ES42R41]: ~~Only - please confirm that the distances are agreed with AQUIND in their absolute discretion.~~

Commented [ES43]: ~~Only - please confirm that the distances are agreed with AQUIND in their absolute discretion.~~

Commented [HSF44R43]: We have included Transmission Cables within the 1000m above, noting previous comments that it is WTG which really drive the distance, but noted TBC.

Commented [ES45R43]: RED can agree to the 1000m distance only as a trigger for the requirement to enter into a Proximity Agreement - it is not the case that RED agree to 1000m as separation distance. For this reason (d) of the definition of Proximity Agreement has been deleted - it opened up the question that the separation distance might be otherwise prescribed.

Commented [HSF46]: Use of this definition restricts to RED Works in the overlap area, and this need to apply to all works authorised by the RED DCO.

Commented [HSF47]: Subject to technical consideration, but understand there will need to be a distance from the works so that cover of the works is not increased.

4.2.94.2.5 to provide to AQUIND the RED Post-Construction Information as soon as is reasonably practicable following and in all cases within not more than four months of the completion of construction of the RED Works.

4.2.104.2.6 to Maintain the RED works in good order such that they do not give rise to any damage to AQUIND Works by reason of non-repair.

4.2.114.2.7 prior to applying for or promoting any Safety Zone where compliance with it would prevent access to any part of the AQUIND Order Limits in connection with the construction, Maintenance and decommissioning of the AQUIND Works or would restrict to any extent the construction, Maintenance and decommissioning of the AQUIND Works:

- (A) to inform AQUIND of the Safety Zones proposed to be applied for; and
- (B) to agree with AQUIND (both parties acting reasonably) the terms of dispensation from the enforcement of that Safety Zone so that it does not prevent access to any part of the AQUIND Order Limits in connection with the construction, Maintenance and decommissioning of the AQUIND Works or restrict to any extent the construction, Maintenance and decommissioning of the AQUIND Works prior to any such Safety Zone being applied for or promoted; and
- (C) otherwise to inform AQUIND of any and all Safety Zones applied for which may impact upon the Overlap Area and of the publication of any notice of a proposed Safety Zone which may impact upon the Overlap Area as soon as is reasonably practicable following their submissions or publication (as is relevant in the circumstances).

4.2.124.2.8 not less than 90 days prior to the decommissioning of any part of the RED Works to submit to AQUIND and to use all reasonable endeavours to agree with AQUIND information relevant to how the decommissioning works will be undertaken and confirming how those works will not adversely impact the AQUIND Works and not to commence the decommissioning of any part of the RED Works until the information relevant to how the decommissioning works will be undertaken is agreed with AQUIND and thereafter to carry out the decommissioning works in accordance with the agreed Information.

4.2.134.2.9 where received from AQUIND to use all reasonable endeavours to agree with AQUIND the decommissioning information for the AQUIND Works in the interest of confirming how those works will not adversely impact RED Works.

4.2.144.2.10 to allow AQUIND and representatives of AQUIND and those employed on their behalf to watch and inspect the construction, maintenanceMaintenance and decommissioning of the RED Works.

4.2.154.2.11 subject to the AQUIND Order having not been made at the relevant time, to withdraw any and all objections and representations to the AQUIND Order in writing within 5 working days of the date of this Agreement and to provide a copy of that withdrawal to AQUIND and to refrain from any further opposition to or representation on the AQUIND Order save as authorised by Clause 4.2.12[4.1.1673] below.

4.2.164.2.12 Nothing in this Agreement shall prejudice or affect the right of RED to object to any new or amended provisions of the AQUIND Order that may be introduced after the date of this Agreement which make a material change which is deemed by RED to be prejudicial to the RED Works and/or its obligations in this Agreement.

5. **CROSSING AGREEMENTS [AND PROXIMITY AGREEMENTS]**

Commented [ES48]: This should relate to active construction and maintenance, or planned and notified to RED, otherwise it would be a permanent restriction on application for safety zones which might overlap even slightly with the AQUIND Order limits. Further, should be unless otherwise agreed, as there may not be any impacts even if there is an overlap. What is 'impact on the Overlap Area' intended to cover? Is it AQUIND's intention that it will apply for safety zones for any parts of its works? If so this clause should be reciprocated by AQUIND

Commented [HSF49R48]: Impacts on the Overlap Area are those impacts stated at the start of the clause, so it would prevent access, or restrict construction and maintenance works.

Unless otherwise agreed wording will not be accepted, as those impacts are in no circumstances acceptable.

It is not AQUIND's intention to apply for safety zones, because they are not applicable to the AQUIND project in accordance with the relevant legislation and what that applies to.

Commented [ES50R48]: Not agreed - should relate to active construction of the AQUIND Works.

For discussion in context of AQUIND Technical response.

Commented [HSF51R48]: This is not agreed. AQUIND cannot agree to anything which would prevent access for construction or maintenance works. RED to consider if any dispensation could be applied for AQUIND in the Safety Zone such that it does not prevent access.

Commented [ES52]: Only to the extent that a decision on the Aquind DCO has not been made.

Commented [ES53]: RED - new provision to consolidate the arrangements as regards Crossing Agreements. For comment - further scenarios to be considered for? For discussion: Whether Proximity Agreement arrangements applied to certain obligations in clauses 4.1.1 and 4.1.2

- 5.1 The Parties will co-operate and use all reasonable endeavours to enter into Crossing Agreements in respect of each Necessary Crossing to ensure that appropriate arrangements are in place for each of the following scenarios:
- 5.1.1 in the event that the RED Works progress in advance of the AQUIND Works, agreement regarding the interface of the Array Cables and the AQUIND Works prior to the construction of the Array Cables in order that such crossings do not prejudice the operation or Maintenance of the Array Cables and shall not prevent the construction of the AQUIND Works or give rise to interference with the operation or Maintenance of the AQUIND Works once constructed;
- 5.1.2 in the event that the AQUIND works progress in advance of the RED Works, agreement regarding the crossing points of the AQUIND Works by the Array Cables and the interface of the AQUIND Works and the Array Cables in order that the construction of such crossings by the Array Cables shall not be prevented and shall not give rise to interference with the operation or Maintenance of the AQUIND Works;
- 5.1.3 in the event that the AQUIND Works and the RED Works progress simultaneously, agreement for the provision of the crossing points of the AQUIND Works and the Array Cables to ensure that each of the AQUIND Works and the Array Cables can be constructed without preventing the construction of the other and shall not prejudice the operation or Maintenance of the AQUIND Works or the Array Cables.

and the parties agree that Crossing Agreements may be required for up to four crossings of the Overlap Area by Array Cables only.

- 5.2 The parties agree that unless otherwise agreed (each acting reasonably) no construction will take place in the Overlap Area in connection with either the AQUIND Works or the RED Works until such time as both parties are satisfied that any relevant necessary Crossing Agreement in respect of such part of those works is in place.
- 5.3 The Parties will co-operate and use all reasonable endeavours to enter into Proximity Agreements to regulate the interface of the AQUIND Works and any Wind Turbine Generators, Offshore Substations or Transmissions Cables (where not subject to a Crossing Agreement) comprised in the RED Works within 1000 metres of the boundary of the Overlap Area.
- 5.4 The Parties agree that they shall when using all reasonable endeavours expeditiously and diligently negotiate the relevant Crossing Agreement or Proximity Agreement in good faith and shall enter into such Crossing Agreement or Proximity Agreement as soon as is reasonably practicable SAVE THAT each Party shall not be obliged to enter into any Proximity Agreement where there are safety or critical or operational issues that have not been resolved as appropriate at that stage as each party shall in its sole discretion determine and where in the opinion of either Party (acting reasonably) the other Party is not using all reasonable endeavours in the manner provided for by this Clause 5.4 or has identified a matter as one which is safety or critical of would lead to operational issues and this is not agreed by the other Party, they may refer the matter for dispute resolution in accordance with Clause 8.
- 5.5 Any dispute pursuant to this clause 5 will be referred to dispute resolution in accordance with clause 88.

6. COSTS AND EXPENSES

- 6.1 Save where otherwise agreed in writing between the parties (including where agreed in any Crossing Agreement) and subject always to Clause [110] of this Agreement:
- 6.1.1 AQUIND shall be responsible for the costs of RED in respect of:
- (A) approving the AQUIND Pre-Construction Information;
 - (B) approving information relevant to how the decommissioning of the AQUIND works will be undertaken;

Commented [ES54]: If separate crossing agreements are entered into - how will those agreements works alongside this agreement - as they would seem to be covering very similar obligations (eg. approval of works that interface between the projects). As above, suggest appending form of Crossing Agreement. Or, embedding the crossing provisions into this agreement so the one agreement covers both works in the vicinity of each other and also crossing works.

If a separate Crossing Agreement is to be entered into, neither party can risk delay. This needs to be clarified through the wording.

Commented [HSF55R54]: That approach is not accepted for the reasons set out above. Separate Crossing Agreements will be needed, and is there is not sufficient information available for those to be entered into now.

A Crossing Agreement would be in addition to, and would take precedence over this agreement. See amendments below which address this.

Commented [ES56R54]: Principle accepted that this Co-operation Agreement will be 'Agreement to agree'. As regards Crossing Agreements however, the obligation should only bite where (i) one project has already been construction or (ii) where the construction of both is simultaneous (it would not make sense for a Crossing Agreement to apply to an area where there is no infrastructure in the ground).

- (C) any works which are required to the RED Works to carry out the construction of the AQUIND Works in accordance with the agreed AQUIND Pre-Construction Information, including any costs of RED incurred in undertaking works to RED Works to facilitate the AQUIND Works being undertaken in accordance with the agreed AQUIND Pre-Construction Information;
- (D) any works which are required to the RED Works to carry out the decommissioning of the AQUIND Works in accordance with the agreed decommissioning information, including any costs of RED incurred in undertaking works to RED Works to facilitate the AQUIND Works being decommissioned in accordance with the agreed decommissioning information; and
- (E) the reasonable costs for RED watching and inspecting the construction and decommissioning of the AQUIND Works;
- 6.1.2 RED shall be responsible for the costs of AQUIND in respect of:
- (A) approving the RED Pre-Construction Information;
- (B) approving information relevant to how the decommissioning of the RED works will be undertaken;
- (C) any works which are required to the AQUIND Works to carry out the construction of the RED Works in accordance with the agreed RED Pre-Construction Information, including any costs of AQUIND incurred in undertaking works to AQUIND Works to facilitate the RED Works being undertaken in accordance with the agreed RED Pre-Construction Information;
- (D) any works which are required to the AQUIND Works to carry out the decommissioning of the RED Works in accordance with the agreed decommissioning information, including any costs of AQUIND incurred in undertaking works to AQUIND Works to facilitate the RED Works being decommissioned in accordance with the agreed decommissioning information; and
- (E) the reasonable costs for AQUIND watching and inspecting the construction and decommissioning of the RED Works; and
- 6.1.3 when incurring costs, expenses or losses which are payable by the other party to this Agreement the relevant party must at all times act reasonably and in the same manner as they would if they were funding the cost, expenses or losses themselves.

7. CONSULTATION AND CO-OPERATION

- 7.1 Each party shall act in good faith to co-operate with, and provide assistance to, each other as may be required to give effect to the provisions of this Agreement and otherwise do nothing to hinder or prevent the other party from the proper execution of any right or obligation allowed or required under this Agreement or the carrying out of the AQUIND Works or the RED Works.
- 7.2 Where any approval, agreement, consent or confirmation of a party is required pursuant to the terms of this Agreement (including for the avoidance of doubt in connection with any Method Statement), it shall not be unreasonably withheld or delayed.

8. DISPUTE RESOLUTION

- 8.1 Save for matters of interpretation of this Agreement (which shall be matters for the Court) in the event of any dispute arising between the parties hereto in respect of any matter contained in this Agreement including questions as to the propriety and/or necessity of any cost or and any question of reasonableness of the same the parties will use reasonable endeavours to attempt to resolve that dispute amicably (including holding a meeting attended by at least

Commented [ES57]: Should (c) refer to "amendments"? To include the costs of seeking approval for any amendments from the MMO where necessary.

Commented [HSF58R57]: RED to clarify this comment

Commented [ES59]: And the costs of securing any necessary marine licence to facilitate works to the RED Works

Commented [HSF60R59]: All RED works required in connection with crossing the Overlap Area are to be included in the DCO (and the DML), and so AQUIND will not be bearing the cost of any amendments which are required.

Commented [ES61]: Limit to the Overlap Area or works in any other area that (considered reasonably) may impact on the RED Works

Commented [HSF62R61]: Definition of AQUIND Works is limited to the Overlap Area.

Commented [ES63]: As drafted, there does not seem to be any rights to allow representatives to watch and inspect the works in the body of the agreement (however suggest that this is provided for).

Commented [HSF64R63]: Drafting added to Clause 3 and 4.

Commented [ES65]: Same comments as per AQUIND Works

one representative from each party if considered appropriate) for a period of 20 Working Days from the date on which any party notifies the other party in writing that a dispute has arisen.

8.2 In the event that the dispute has not been resolved amicably following the expiry of the period of 20 Working Days referred to in clause [8.1] despite the parties using reasonable endeavours to resolve the dispute amicably, any party may refer the dispute to an ~~shall be referred to an~~ expert ("Expert") to be agreed upon between the parties hereto or at the request and option of either of them to be nominated at their joint expense by or on behalf of the President of the Institution of Civil Engineers and the Expert's decision shall (in the absence of manifest error) be final and binding on the parties hereto and whose costs shall be borne by the parties at his discretion.

8.3 The Expert shall:

8.3.1 have at least ten years post qualification experience in the subject matter of the dispute;

8.3.2 be appointed subject to an express requirement that he reaches a decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event in not more than 40 Working Days from the date of his appointment to act;

8.3.3 be required to give notice to each of the parties within 5 Working Days of appointment inviting each of them to submit within 10 Working Days of that notice written submissions and supporting material which shall also be issued by the parties to each other within the same 10 Working Day period and shall afford to each of the parties an opportunity to make counter submissions within a further 5 Working Days in respect of any such submission and material and disregard any representations made out of time;

8.3.4 give its decision in writing within 15 Working Days from receipt of any counter submissions or in the event that there are no counter submissions within 15 Working Days of receipt of the written submissions and supporting material with reasons for the decision;

8.3.5 make a determination as to payment of the Expert's costs and the parties' legal and professional costs of engaging in the dispute resolution process under this Clause 7.

8.4 It is hereby declared and agreed between the parties hereto that nothing in this Clause [8] shall be taken to fetter the ability of any party to seek legal redress of any breach of the obligations contained in this Agreement.

9. CONFIDENTIALITY

9.1 The parties must not disclose any Confidential Information to any other person (save where such person is bound by a legally enforceable requirement and indemnity which benefits the party who provided the relevant Confidential information to keep such information confidential) except with the other party's prior consent, which may not be unreasonably withheld or delayed but which may be provided subject to reasonable conditions.

10. TRANSFER OF POWERS AND NOVATION

10.1 In the event that:

10.1.1 any person other than AQUIND is appointed as the "Undertaker" (as defined in the AQUIND Order) for the purposes of the AQUIND Order in relation to parts of the AQUIND Works; and/or

10.1.2 powers of the "Undertaker" relevant to the parts of the AQUIND Works under the AQUIND Order are devolved to any other person,

(the 'AQUIND Transferee'), AQUIND will:

Commented [ES66]: Forthwith on his appointment? Otherwise notice could be given on day 9 requiring submissions on day 10. Copied to each other - otherwise when does the 5 days start?

Commented [ES67]: Suggest confidentiality provisions is extended for more clarity - is technical information eg. the AQUIND Post-Construction Information deemed to be Confidential Information - as this will need to be shared with consultants/contractors for their comments etc. - parties will also need to be able to share information received under this agreement within their shareholder group and also with potential lenders etc. For discussion.

Commented [HSF68R67]: The post-construction information is information that will be submitted to the MMO, and therefore will be on the public record and able to be disclosed unless protected by law (and therefore Confidential information as defined). Unclear how the need to share information with shareholder groups / lenders etc. adds to this. That person will simply need to be bound to a legally enforceable requirement to keep such information confidential.

- 10.1.3 prior to the transfer of powers require the AQUIND Transferee to enter into a deed of covenant in favour of RED that the AQUIND Transferee shall observe and perform the obligations and restrictions on AQUIND under this Agreement as they relate to the exercise of the powers which are to be transferred as though the AQUIND Transferee had been an original party to this Agreement and following such transfer references to AQUIND in this Agreement shall be deemed to include reference to the AQUIND Transferee; and
- 10.1.4 remain liable for any breach of this Agreement relevant to such part of the AQUIND Works for which the AQUIND Transferee is to be the "Undertaker" or to which AQUIND Transferee the powers of AQUIND are to be devolved until the AQUIND Transferee has entered into a deed of covenant in accordance with this clause.
- 10.2 AQUIND shall not transfer, assign or otherwise part with the benefit of this Agreement in whole or in part without the prior written consent of RED (such consent not to be unreasonably withheld or delayed).
- 10.3 In the event that:
- 10.3.1 any person other than RED is appointed as the "Undertaker" (as defined in the RED Order) for the purposes of the RED Order in relation to parts of the RED Works; and/or
- 10.3.2 powers of the "Undertaker" relevant to the parts of the RED Works under the RED Order are devolved to any other person,
- (the 'RED Transferee'), RED will:
- 10.3.3 prior to the transfer of powers require the RED Transferee to enter into a deed of covenant in favour of AQUIND that the RED Transferee shall observe and perform the obligations and restrictions on RED under this Agreement as they relate to the exercise of the powers which are to be transferred as though the RED Transferee had been an original party to this Agreement and following such transfer references to RED in this Agreement shall be deemed to include reference to the RED Transferee; and
- 10.3.4 remain liable for any breach of this Agreement relevant to such part of the RED Works for which the RED Transferee is to be the "Undertaker" or to which RED Transferee the powers of RED are to be devolved until the RED Transferee has entered into a deed of covenant in accordance with this clause.
- 10.4 RED shall not transfer, assign or otherwise part with the benefit of this Agreement in whole or in part without the prior written consent of AQUIND (such consent not to be unreasonably withheld or delayed).

11. INDEMNITIES AND INSURANCE

~~11.~~

- 11.1 [AQUIND shall indemnify RED in respect of all costs and expenses incurred (including legal, surveying and engineering costs and disbursements) and damages or losses suffered to the extent that the same are reasonably incurred in connection with any act or omission by AQUIND that is in breach of this Agreement;
- 11.2 RED shall indemnify AQUIND in respect of all costs and expenses incurred (including legal, surveying and engineering costs and disbursements) and damages or losses suffered to the extent that the same are reasonably incurred in connection with any act or omission by RED that is in breach of this Agreement;

~~11.3 Subject to clause [10.5] and [10.6] and unless otherwise agreed between the parties (including where agreed in any Crossing Agreement), if by reason or in consequence of the construction of the RED Works or in consequence of the construction, use, maintenance or failure of the RED Works or their decommissioning or in consequence of any act or default of RED (or any person employed or authorised by it) in the course of carrying out the RED Works, any damage is caused to the AQUIND Works, or there is any interruption in any~~

Commented [ES69]: And following such transfer references to AQUIND in this Agreement shall be deemed to include reference to the AQUIND Transferee

Commented [ES70]: Clarify that following such transfer references to RED in this Agreement shall be deemed to include reference to the RED Transferee

Commented [ES71]: The principal of an uncapped indemnity is not accepted. RED will revert separately in respect of a proposed limit on liability.

As drafted appears to cover loss of revenue?

Commented [HSF72R71]: Uncapped indemnities included in the protective provisions issued by RED relating to the AQUIND works, so that position on an uncapped indemnity is unexpected. Please however send across your position and AQUIND will consider, noting parity will be required.

The wording otherwise reflects the protective provisions issued by RED to AQUIND, and we also understand this covers loss of revenue.

Commented [ES73]: As discussed, RED's position is that uncapped indemnity in the Agreement is not accepted. Options for discussion:

(1) Propose a cap of £30million for a single event and £60million in any 12 month period.

(2) Given that this Co-operation is essentially an 'agreement to agree', it arguably might work better in this document to set out the framework (limit/cap/principles) of the indemnity that would then be enforced through the Crossing Agreements or Proximity Agreement as the case may be.

Commented [HSF74R73]: A cap is acceptable in principle.

The risk to each project is not the same because of what the impact of damaging cables in a specific location would be. For AQUIND this would likely mean an outage for half of the Project, and the impact would be less for Rampion but a smaller amount of the Array would be impacted.

Appropriate caps required for each project, but given the potential impact the caps, reflecting the risk to each project, may not be the same.

AQUIND are further considering caps which would be adequate to cover repair cost and lost revenue, and we would also like to understand on what basis the above caps have been proposed.

Commented [ES75R73]: This Cooperation Agreement now includes provision to enter into Proximity Agreements which are defined to include indemnity provisions. RED's position is that it is appropriate that the Indemnity provisions are included in those Proximity Agreements, not this document.

Commented [HSF76R73]: This removes an indemnity in respect of costs rising out of the breach of this co-operation agreement, and that is not acceptable. An indemnity is required and must sufficiently protect AQUIND's interests.

supply provided by AQUIND via the AQUIND Works, or AQUIND becomes liable to pay any such amount to any third party, RED will:

~~11.3.1 bear and pay on demand accompanied by an invoice or claim from AQUIND the cost reasonably and properly incurred by AQUIND in making good such damage or restoring the supply; and~~

~~11.3.2 indemnify AQUIND for any other expenses, loss, demands, proceedings, claims, penalty or costs incurred by AQUIND, by reason or in consequence of any such damage or interruption or AQUIND becoming liable to any third party as aforesaid other than arising from any default by AQUIND.~~

~~11.4 Subject to clause [10.5] and [10.6] and unless otherwise agreed between the parties, if by reason or in consequence of the construction of the AQUIND Works or in consequence of the construction, use, maintenance or failure of the AQUIND Works or their decommissioning or in consequence of any act or default of AQUIND (or any person employed or authorised by it) in the course of carrying out the AQUIND Works, any damage is caused to the RED Works, or there is any interruption in any supply provided by RED via the RED Works, or RED becomes liable to pay any such amount to any third party, AQUIND will:~~

~~11.4.1 bear and pay on demand accompanied by an invoice or claim from RED the cost reasonably and properly incurred by RED in making good such damage or restoring the supply; and~~

~~11.4.2 indemnify RED for any other expenses, loss, demands, proceedings, claims, penalty or costs incurred by RED, by reason or in consequence of any such damage or interruption or RED becoming liable to any third party as aforesaid other than arising from any default by RED.]~~

~~11.5~~ 11.3 Nothing in this Agreement imposes any liability on either party with respect to any damage, cost, expense or loss which is attributable to the negligence of the other party or of any person in the other party's employment or of the other party's contractors or agents and any liability of the relevant party under this Agreement must be reduced proportionately to the extent to which any damage, cost, expense or loss is attributable to the negligence of the other party or of any person in the other party's employment or of the other party's contractors or agents.

~~11.6~~ 11.4 Nothing in this Agreement is intended and nor shall it be construed as an attempt by any party to this Agreement to exclude or restrict liability for:

~~11.6.1~~ 11.4.1 death or personal injury from its negligence or by the negligence of a person for whom it is vicariously liable (negligence being defined in section 1(1) of the Unfair Contract Terms Act 1977); and/or

~~11.6.2~~ 11.4.2 any losses caused by the fraud of either party, its contractors or any other person for whom that party is responsible.

~~11.7~~ 11.5 Each party must give the other reasonable notice of any claim or demand and no settlement, admission of liability or compromise or demand must be made, unless payment is required in connection with a statutory compensation scheme without first consulting the other and considering its representations.

~~11.8~~ 11.6 Each of the parties to this Agreement shall use reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, losses, demands or penalties, to which the indemnity in this clause [10] applies and if requested to by the other party, shall provide an explanation of how any such claims have been minimised and each party shall only be liable for claims reasonably incurred by the other party, and any action taken by a party pursuant to this clause [10] will be at the reasonable cost of the other party.

~~11.9~~ 11.7 AQUIND must not commence construction (and must not permit the commencement of such construction) of any part of the AQUIND Works until RED is satisfied acting reasonably (but subject to all necessary regulatory constraints) that AQUIND or its contractor has procured acceptable insurance (and provided evidence to RED that it must Maintain such acceptable insurance for the construction period of the AQUIND Works from

Commented [ES77]: There is a risk of significant overlap with the crossing agreements here if separate crossing agreements are also being entered into - see comments above re. bringing this all under once agreement

Commented [HSF78R77]: Trust the additional wording "(including where agreed in any Crossing Agreement)" has addressed this.

AQUIND's position on the need for separate crossing agreements in the future has otherwise been clearly stated.

the proposed date of commencement of construction of the AQUIND Works) and RED has confirmed the same in writing to AQUIND.

~~11.10~~ 11.8 RED must not commence construction (and must not permit the commencement of such construction) of any part of the RED Works until AQUIND is satisfied acting reasonably (but subject to all necessary regulatory constraints) that RED or its contractor has procured acceptable insurance (and provided evidence to AQUIND that it must maintain such acceptable insurance for the construction period of the RED Works from the proposed date of commencement of construction of the RED Works) and AQUIND has confirmed the same in writing to RED.

~~11.11~~ 11.9 AQUIND must not commence operation ~~or, maintenance~~ Maintenance, repair or replacement works (and must not permit the commencement of operation ~~or, maintenance~~ Maintenance, repair or replacement works) of any part of the AQUIND Works until RED is satisfied acting reasonably (but subject to all necessary regulatory constraints) that AQUIND or its contractor has procured acceptable insurance (and provided evidence to RED that it must maintain such acceptable insurance for the period of ~~maintenance~~ Maintenance, repair or replacement works in respect of the AQUIND Works from the proposed date of commencement of operation of the AQUIND Works and to provide evidence of renewal of such insurance as appropriate) and RED has confirmed the same in writing to AQUIND.

~~11.12~~ 11.10 RED must not commence ~~operation and, maintenance~~ Maintenance, repair or replacement works (and must not permit the commencement of operation ~~and Maintenance~~ and Maintenance, repair or replacement works) of any part of the RED Works until AQUIND is satisfied acting reasonably (but subject to all necessary regulatory constraints) that RED or its contractor has procured acceptable insurance (and provided evidence to AQUIND that it must maintain such acceptable insurance for the period of ~~Maintenance, repair or replacement works~~ Maintenance, repair or replacement works in respect of the RED Works from the proposed date of commencement of operation of the RED Works and to provide evidence of renewal of such insurance as appropriate) and AQUIND has confirmed the same in writing to RED.

~~11.13~~ 11.11 AQUIND must not commence decommissioning (and must not permit the commencement of decommissioning) of any part of the AQUIND Works until RED is satisfied acting reasonably (but subject to all necessary regulatory constraints) that AQUIND has procured acceptable insurance (and provided evidence to RED that it must maintain such acceptable insurance for the decommissioning period of the AQUIND Works from the proposed date of commencement of decommissioning of the AQUIND Works) and RED has confirmed the same in writing to AQUIND.

~~11.14~~ 11.12 RED must not commence decommissioning (and must not permit the commencement of decommissioning) of any part of the RED Works until AQUIND is satisfied acting reasonably (but subject to all necessary regulatory constraints) that RED has procured acceptable insurance (and provided evidence to AQUIND that it must maintain such acceptable insurance for the decommissioning period of the RED Works from the proposed date of commencement of decommissioning of the RED Works) and AQUIND has confirmed the same in writing to RED.

12. TERMINATION

12.1 This Agreement will terminate if any of the following events occur:

12.1.1 the application for the AQUIND Order is withdrawn, in which case AQUIND shall provide RED with written notification of such withdrawal within 10 Working Days of AQUIND notifying the Secretary of State of the withdrawal and this Agreement will terminate immediately on the date of delivery of the notice in accordance with clause ~~XX~~ 14.2;

12.1.2 the Secretary of State having decided the application for the AQUIND Order decides to refuse development consent and AQUIND ~~not choosing to~~ bring a judicial review in relation to such refusal, in which case AQUIND will provide RED

Commented [ES79]: Why is operation referenced here - why would operation of the works require insurance to be in place?

Commented [HSF80R79]: For if there is interference as a consequence of operation.

Commented [ES81]: 1. Termination needs to also be on the basis of the parties not delivering the project during the consent being live phase or if FID isn't secured by X.
2. This will require a decision to be made in order for the 10 WDs to run. Suggest 'determining not to...'

Commented [HSF82R81]: Do not consider anything further is needed following the amendments made. FID provision will not be included, as transfer could still occur at that stage, and so must be linked to ability to commence expiring with the works having been.

- with written notification thereof within 10 Working Days of its decision not to bring a judicial review or the period to bring a judicial review expiring without any judicial review being lodged by AQUIND and this Agreement will terminate immediately on the date of delivery of the notice in accordance with clause ~~XX~~ 14.2 or within 10 Working Days the period to bring a judicial review expiring without any judicial review being lodged by AQUIND (whichever is sooner);
- 12.1.3 if following the final determination of any challenge proceedings in respect of the decision in relation to the AQUIND Order a decision by the Secretary of State to refuse development consent is upheld;
- 12.1.4 if following the final determination of any challenge proceedings in respect of the decision in relation to the AQUIND Order the decision is quashed and the Court orders the application for the AQUIND Order to be remitted to the Secretary of State and the application for the AQUIND Order is subsequently refused and AQUIND chooses not to bring a judicial review in relation to such refusal, in which case AQUIND will provide RED with written notification thereof within 10 Working Days of its decision not to bring a judicial review or the period to bring a judicial review expiring without any judicial review being lodged by AQUIND and this Agreement will terminate immediately on the date of delivery of the notice in accordance with clause ~~XX~~ 14.2 or within 10 Working Days of the period to bring a judicial review expiring without any judicial review being lodged by AQUIND (whichever is sooner);
- 12.1.5 if following the AQUIND Order being made the works authorised by the AQUIND Order are not commenced before the period within which they must commence expires;
- 12.1.6 the application for the RED Order is withdrawn, in which case RED shall provide AQUIND with written notification of such withdrawal within 10 Working Days of RED notifying the Secretary of State of the withdrawal and this Agreement will terminate immediately on the date of delivery of the notice in accordance with clause ~~XX~~;
- 12.1.7 the Secretary of State having decided the application for the RED Order decides to refuse development consent and RED not choosing to bring a judicial review in relation to such refusal, in which case RED will provide AQUIND with written notification thereof within 10 Working Days of its decision not to bring a judicial review or the period to bring a judicial review expiring without any judicial review being lodged by RED and this Agreement will terminate immediately on the date of delivery of the notice in accordance with clause ~~XX~~ 14.2 or within 10 Working Days the period to bring a judicial review expiring without any judicial review being lodged by AQUIND (whichever is sooner);
- 12.1.8 if following the final determination of any challenge proceedings in respect of the decision in relation to the RED Order a decision by the Secretary of State to refuse development consent is upheld;
- 12.1.9 if following the final determination of any challenge proceedings in respect of the decision in relation to the RED Order the decision is quashed and the Court orders the application for the RED Order to be remitted to the Secretary of State and the application for the RED Order is subsequently refused and RED chooses not to bring a judicial review in relation to such refusal, in which case RED will provide AQUIND with written notification thereof within 10 Working Days of its decision not to bring a judicial review or the period to bring a judicial review expiring without any judicial review being lodged by RED and this Agreement will terminate immediately on the date of delivery of the notice in accordance with clause ~~XX~~ 14.2 or within 10 Working Days of the period to bring a judicial review expiring without any judicial review being lodged by AQUIND-RED (whichever is sooner);
- 12.1.10 if following the RED Order being made the works authorised by the RED Order are not commenced before the period within which they must commence expires.

Commented [ES83]: Of what? Presumably this needs a positive decision not to proceed with the JR? Query how the 10 days relates to the expiration of the period for bringing a challenge. Or is it intended that if AQUIND determine not to challenge they can terminate this agreement by giving this notice rather than waiting for the end of the JR period?

Commented [ES84]: Is this intended to cover the scenario where the Order is granted but challenged by third party? This option does not appear to be covered - it could be accommodated here

Commented [HSF85R84]: It is covered in this clause already, because that would be a final determination in respect of any challenge proceedings in respect of the decision in relation to the AQUIND order.

Commented [ES86]: Aquind

Commented [ES87]: Similar comment to above, but presumably the agreement will terminate within either 10 days of service of the written notice or 10 days of the expiration of the period for bringing a JR?

Commented [ES88]: Same comments apply as to AQUIND provisions above

13. VARIATIONS

13.1 No variation of this Agreement is effective unless it is duly executed in writing and is signed by or on behalf of a duly authorised representative of each of the parties.

14. NOTICES

14.1 Any notice given under or in relation to this Agreement shall be in writing and shall refer to the Agreement and shall be deemed to be sufficiently served if addressed to the AQUIND, or RED, as the case may be, and sent by recorded delivery or registered post to the address of the parties given in this Agreement or to such other address as they may from time to time designate by written notice to the other.

14.2 Any notice sent in accordance with clause 1[43].1 shall be deemed, in the absence of evidence of earlier receipt, to have been delivered two days after posting or dispatch, exclusive of the day of posting.

14.3 Any notice sent by RED to AQUIND in accordance with clause 1[43].1 shall be addressed to Kirill Glukhovskoy – Managing Director, and shall also be sent to AQUIND by e-mail to.

14.4 Any notice sent by the Undertaker to the Council in accordance with clause 1[43].1 shall be addressed to [XXX] and shall also be sent to RED by e-mail to [XXX].

15. RIGHTS OF THIRD PARTIES

15.1 No third party may enforce the terms of this Agreement under the Contracts (Rights of Third Parties) Act 1999.

16. JURISDICTION

16.1 This Agreement including its construction, validity, performance and enforcement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

16.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

17. ENTIRE AGREEMENT

17.1 This Agreement represents the entire agreement between the parties in relation to the subject matter hereof.

Commented [ES89]: Project rep and CoSec rep.

Commented [HSF90R89]: Please provide those details.

Commented [HSF91R89]: Details awaited.

Commented [ES92]: Referred to as an Agreement elsewhere albeit executed as a deed

IN WITNESS whereof this Agreement has been duly executed as a deed by the parties to this Agreement on the date which appears at the head of this document.

EXECUTED by)
AQUIND LIMITED)
acting by two directors or one director)
and the company secretary:)

Director

Director/Secretary

EXECUTED by)
RAMPION EXTENSION)
DEVELOPMENT LIMITED)
acting by two directors or one director)
and the company secretary:)

Director

Director/Secretary

[HSF Amends 22.05](#)[ESI amends 03/06/HSF](#)[ESI amends 14/05/2024](#)
[ESI amends 06/09/06/2024](#)

APPENDIX 1- OVERLAP AREA

These notification periods do not seem sufficient - particularly if the Parties have not reached consensus over the Pre-Constructon Information.

We suggest that the notification is for the intended commencement date, ie when the pre-construction information is due to be submitted to the MMO. This notification may need to be given 6 months before commencement to allow time for agreement of the pre-commencement information (or such time as is reasonable to for the information to be prepared and agreed prior to submission).

This clause should also make provision where the AQUIND Works are being carried out in the vicinity of RED's Works - for RED to appoint representatives overseeing the AQUIND Works to ensure they are carried out in accordance with the agreed AQUIND Pre-Construction Information and in a manner than minimises the risks to the RED Works. Suggest any such provision is reciprocal.

Suggest that this obligation is extended to include obligation on AQUIND to provide RED upon request by RED (acting reasonably) where AQUIND are maintaining their works in the vicinity of RED Works, copies of method statements etc. for approval before commencing the maintenance works. Suggest that this obligation is made reciprocal.

ANNEX 2
PROTECTIVE PROVISIONS

Part 8

FOR THE PROTECTION OF AQUIND AND RED

Application

1. The provisions of this Part of this Schedule apply for the protection of AQUIND Limited and have effect unless otherwise agreed in writing between RED and AQUIND Limited.

2. In this Part of this Schedule —

"AQUIND" means AQUIND Limited (company number 06681477) or the person who has the benefit of the AQUIND Order in accordance with article 6 (Benefit of Order) and 7 (Consent to transfer benefit of Order) of the AQUIND Order;

"AQUIND Pre-Construction Information" means the documentation and information required in accordance with paragraph 4 (1) of Part 2 of Schedule 15 to the AQUIND Order, as amended or agreed with the MMO;

"AQUIND Post-Construction Information" means the cable burial management plan required in accordance with paragraph 11 of Part 2 of Schedule 15 to the AQUIND Order;

"AQUIND order" means The AQUIND Interconnector Order 202[X] as it is made by the Secretary of State;

"AQUIND Order Limits" has the same meaning as is given to the term 'Order limits' in the AQUIND Order;

"AQUIND Works" means Work No. 7 as described at paragraph 3 and any associated development as described at paragraph 4 of Part 1 of Schedule 15 to the AQUIND Order in so far as such works are within the Overlap Area;

"Array Cables" means the network of offshore subsea Transmission Cables connecting Wind Turbine Generators to each other and to the Offshore Substations comprised in the RED Works;

"Cable Protection" means measures for the protection of Transmission Cables and auxiliary cables from physical damage and exposure including but not limited to concrete mattresses and/or rock placement, bagged solutions filled with stone, rock or gravel, grout, concrete and other materials and protective shells or sheaths;

"Commencement" means —

- (a) in respect of the AQUIND Works the first carrying out of any licensed marine activities comprised within those works, excluding any non-intrusive pre-construction surveys;
- (b) in respect of the RED Works the first carrying out of any licensed marine activities comprised within those works, excluding any non-intrusive pre-construction surveys;

"Confidential Information" means information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and includes information whose disclosure would or would be likely to prejudice the commercial interests of any persons trade secrets, intellectual property rights and know-how and all personal data and sensitive personal data within the meaning of the Data Protection Act 2018;

"Crossing Agreement" means any agreement entered into by the parties pursuant to paragraph 5 hereof for —

- (a) the crossing of the AQUIND Works by Array Cables to ensure the Array Cables do not give rise to interference with the operation or Maintenance of the AQUIND Works; or

- (b) the crossing of the Array Cables by the AQUIND Works to ensure that the cables or other elements comprising the AQUIND Works or any part of them do not give rise to interference with the operation or Maintenance of the RED Works; or
- (c) to manage the safe interface of the installation of subsea cable crossings as part of the RED Works and the AQUIND Works for their mutual protection including in the event the AQUIND Works have not yet been constructed in respect of the crossing by the Array Cables of any area where the AQUIND Works may be constructed in accordance with the AQUIND Order to ensure the Array Cables do not prevent the construction of the AQUIND Works and will not give rise to interference with the operation or Maintenance of the AQUIND Works once constructed;

"Export Cable" means Transmission Cables connecting the Offshore Substations to works which are landwards of mean high water springs authorised by the RED Order comprised in the RED Works;

"Maintenance" means maintain, inspect, upkeep, repair, adjust, alter, improve, preserve and further includes remove, reconstruct and replace any part of the AQUIND Works and the RED Works (as is relevant) and "Maintain" and similar terms shall be construed accordingly;

"MMO" means the Marine Management Organisation;

"Necessary Crossing" means any point at which an Array Cable comprised in the RED Works cross the AQUIND Order Limits;

"Proximity Agreement" means any agreement entered into by AQUIND and RED pursuant to paragraph 5 hereof setting out the technical and commercial terms on which the RED Works and the AQUIND Works will be located and operated in proximity to one another including (but not limited to) —

- (a) clauses to define the liabilities and rights of both AQUIND and RED;
- (b) exclusion/inclusion of consequential losses;
- (c) details of financial compensation arrangements for each of AQUIND and RED where applicable relating to specific arrangements;
- ~~(e)(d) NOT USED~~
- ~~(d) agreement on proximity limits informed by the Proximity Guidelines and which may include for the proximity limits to be modified up or down by agreement depending on the method statements submitted and agreed;~~
- (e) indemnity provisions as appropriate to regulate respective liability in construction interface;
- (f) clearly defined limits of the area to which the Proximity Agreement applies;
- (g) details of how proximate work would be carried out, to include method statements provided by the entity carrying out the work and accepted by the other entity as suitable prior to work proceeding;
- (h) future Maintenance requirements of both AQUIND and RED which may include the method by which notification of operations by each is given to the other;
- (i) definition of the expiry of the Proximity Agreement (for example, at the decommissioning of one or other of the relevant assets);
- (j) provision of representatives from one entity to the other entity's operations and their rights, obligations and limitation of their authority;

~~"Proximity Guidelines" means the European Subsea Cables Association Guideline No.6 The Proximity of Offshore Renewable Energy Installations & Subsea Cable Infrastructures dated 23 November 2023 (or as may be amended or replaced from time to time);~~

"Offshore Substation" means a structure above LAT and attached to the seabed by means of a foundation, with one or more decks containing—

- (a) electrical equipment required to switch, transform, convert electricity generated at the Wind Turbine Generators to a higher voltage ; and
- (b) accommodation, storage, workshop auxiliary equipment, and facilities for operating, maintaining and controlling the substation or Wind Turbine Generators, comprised in the RED Works;

"Offshore Substation Interconnector Cable" means Transmission Cables connecting Offshore Substations comprised in the RED Works;

"Overlap Area" means the extent to which the RED Order Limits overlap the AQUIND Order Limits;

"RED" means Rampion Extension Development Limited (company number 12091939) or the person who has the benefit of the RED Order in accordance with article 5 (Benefit of Order) of the RED Order;

"RED Order" means this Order;

"RED Order Limits" has the same meaning as is given to the term 'Order limits' in the RED Order;

"RED Pre-Construction Information" means the documentation and information required in accordance with paragraph 11 of Part 2 of Schedule 11 and/or Schedule 12 to the RED Order, as amended or agreed with the MMO;

"RED Works" means—

- (a) Work Nos. 1 and 2 and any associated development or ancillary works in connection with those works described at paragraph 3 of Part 1 of Schedule 11 to the RED Order; and
- (b) Work Nos. 3 and 4 of and any associated development or ancillary works in connection with those works described at paragraph 3 of Part 1 of Schedule 12 to the RED Order;

"Safety Zone" means a safety zone for the purposes of the Energy Act 2004;

"Secretary of State" means the Secretary of State for Energy Security and Net Zero (or any such successor Secretary of State performing that function);

"Transmission Cable" means any offshore cable circuits for the transmission of electricity and communications and includes direct lay cables and/or cables pulled through cable ducts or under protective covers in connection with those comprised in the RED Works;

"Wind Turbine Generators" means a structure comprising a tower, rotor with three blades connected at the hub, nacelle, transition piece and ancillary electrical and other equipment which may include J-tube(s), transition piece, access and rest platforms, access ladders, boat access systems, corrosion protection systems, fenders and maintenance equipment, helicopter landing facilities and other associated equipment, fixed to a foundation to be constructed pursuant to Work No. 1 comprised in the RED Works; and

"Working Day" means any day apart from Saturday, Sunday and any statutory bank holiday on which clearing banks are open in England for the transaction of ordinary business.

AQUIND Works

3. AQUIND shall—

(1) not less than 6 months prior to the Commencement of any part of the AQUIND Works to submit to RED and use all reasonable endeavours to agree with RED the AQUIND Pre-Construction Information in respect of such part of the AQUIND Works, in the interest of not adversely impacting the construction of the RED Works or the operation and Maintenance of the RED Works once constructed, within not more than 2 months from the date on which the AQUIND Pre-Construction Information is submitted to RED (or such longer period as may otherwise be agreed with RED) and where the AQUIND Pre-Construction has not been agreed with RED within 2 months from the date on

which the AQUIND Pre-Construction Information is submitted to RED (or such longer period as may otherwise be agreed with RED) either AQUIND or RED may refer the matter to be determined by an Expert in accordance with paragraph 8 hereof; and

(2) not commence the AQUIND Works or such part of the AQUIND Works (as is relevant in the circumstances) until the AQUIND Pre-Construction Information for the AQUIND Works or the relevant part thereof is agreed with RED or has been determined by the Expert; and

(3) thereafter carry out the construction of the AQUIND Works in accordance with the AQUIND Pre-Construction Information as is agreed or as determined by the Expert (and as may be varied by agreement between AQUIND and RED from time to time); and

(4) where received from RED pursuant to paragraph 4(1) hereof, use all reasonable endeavours to agree the RED Pre-Construction Information with RED in the interest of not adversely impacting the construction of the AQUIND Works or the operation and Maintenance of the AQUIND Works once constructed.

(5) not install the AQUIND Works outside of the boundary of the AQUIND Order Limits nor undertake any repair to the AQUIND Works which involves any part of the AQUIND Works or repair being installed outside of the boundary of the AQUIND Order Limits without the prior approval of RED (not to be unreasonably withheld or delayed and as may be given subject to reasonable conditions);

(6) not to apply for a disposal site in connection with the AQUIND Works outside the AQUIND Order Limits without first securing the consent of RED where the proposed disposal site falls within the RED Order Limits;

(7) provide RED with—

- (a) not less than 10 Working Days prior written notification of the Commencement of the AQUIND Works;
- (b) notification of the completion of construction of the AQUIND Works as soon as is reasonably practicable and not later than 48 hours of completion of construction; and
- (c) not less than 5 Working Days' notice of any planned Maintenance works to the AQUIND Works.

(8) provide to RED the AQUIND Post-Construction Information as soon as is reasonably practicable following and in all cases within not more than four months of the completion of construction of the AQUIND Works;

(9) to Maintain the AQUIND works in good order such that they do not give rise to any damage to the RED Works by reason of non-repair;

(10) not less than 90 days prior to the decommissioning of any part of the AQUIND Works to submit to RED and to use all reasonable endeavours to agree with RED information relevant to how the decommissioning works will be undertaken and confirming how those works will not adversely impact the RED Works and not to commence the decommissioning of any part of the AQUIND Works until the information relevant to how the decommissioning works will be undertaken is agreed with RED and thereafter to carry out the decommissioning works in accordance with the agreed Information;

(11) where received from RED use all reasonable endeavours to agree with RED as soon as reasonably practicable the decommissioning information for the RED Works in the interest of confirming how those works will not adversely impact the AQUIND Works; and

(12) allow RED and representatives of RED and those employed on their behalf to watch and inspect the construction, Maintenance and decommissioning of the AQUIND Works.

RED Works

4. RED shall—

(1) not less than 6 months prior to the Commencement of any part of the RED Works submit to AQUIND and use all reasonable endeavours to agree with AQUIND the RED Pre-Construction Information in respect of such part of the RED Works in the interest of not adversely impacting the

construction of AQUIND Works or the operation and Maintenance of the AQUIND Works once constructed, within not more than 2 months from the date on which the RED Pre-Construction Information is submitted to AQUIND (or such longer period as may otherwise be agreed with RED) and where the RED Pre-Construction has not been agreed within 2 months from the date on which the RED Pre-Construction Information is submitted to AQUIND (or such longer period as may otherwise be agreed with RED) either party may refer the matter to be determined by an Expert in accordance with paragraph 8; and

(2) not commence the RED Works or such part of the RED Works (as is relevant in the circumstances) until the RED Pre-Construction Information is agreed with AQUIND or has been determined by the Expert and thereafter RED shall carry out the construction of the RED Works in accordance with the agreed RED Pre-Construction Information as is agreed or as determined by the Expert (and as may be varied by agreement between the parties from time to time); and

(3) where received from AQUIND pursuant to paragraph 3(1) hereof, to use all reasonable endeavours to agree with AQUIND the AQUIND Pre-Construction Information for the AQUIND Works in the interest of not adversely impacting the construction of the RED Works or the operation and Maintenance of the RED Works once constructed.

(4) not to place any Wind Turbine Generators, Substations or Transmission Cables comprised in the RED Works within the boundary of the Overlap Area, save for Array Cables in respect of which a Crossing Agreement has been entered into which provides for those Array Cables to cross the Overlap Area;

(5) not place any Wind Turbine Generators, Offshore Substations or Transmission Cables comprised in the RED Works within [\(i\) 500m of the boundary of the Overlap Area; and \(ii\) 1000 metres of the boundary of the Overlap Area or following the construction of the AQUIND Works within 1000 metres of the as-built AQUIND Works unless and until a Proximity Agreement in respect of the relevant Wind Turbine Generator\(s\), Offshore Substation\(s\) or Transmission Cables PROVIDED ALWAYS that AQUIND will not refuse, nor delay or unreasonably condition any such Proximity Agreement~~or a Crossing Agreement in respect of a relevant Array Cable has been entered into in accordance with paragraph 5 hereof;~~ and](#)

(6) not make any disposal of any inert material of natural origin and/or dredged material produced during construction drilling or seabed preparation for foundation works and cable installation works undertaken pursuant to the RED Order within 500 metres of the Overlap Area excluding such disposal as is associated with any Necessary Crossing and/or where otherwise provided for in the relevant Crossing Agreement or Proximity Agreement;

(7) provide AQUIND with—

- (a) not less than 10 Working Days prior written notification of the Commencement of the RED Works;
- (b) notification of the completion of construction of the RED Works as soon as is reasonably practicable and not later than 48 hours of completion of construction; and
- (c) not less than 5 Working Days notice of any planned Maintenance works to the RED Works.

(8) provide to AQUIND the RED Post-Construction Information as soon as is reasonably practicable following and in all cases within not more than four months of the completion of construction of the RED Works.

(9) Maintain the RED works in good order such that they do not give rise to any damage to AQUIND Works by reason of non-repair.

(10) prior to applying for or promoting any Safety Zone where compliance with it would prevent access to any part of the AQUIND Order Limits in connection with the construction, Maintenance and decommissioning of the AQUIND Works or would restrict to any extent the construction, Maintenance and decommissioning of the AQUIND Works—

- (a) inform AQUIND of the Safety Zones proposed to be applied for;

- (b) agree with AQUIND (both AQUIND and RED acting reasonably) the terms of dispensation from the enforcement of that Safety Zone so that it does not prevent access to any part of the AQUIND Order Limits in connection with the construction, Maintenance and decommissioning of the AQUIND Works or restrict to any extent the construction, Maintenance and decommissioning of the AQUIND Works prior to any such Safety Zone being applied for or promoted; and
- (c) otherwise inform AQUIND of any and all Safety Zones applied for which may impact upon the Overlap Area and of the publication of any notice of a proposed Safety Zone which may impact upon the Overlap Area as soon as is reasonably practicable following their submissions or publication (as is relevant in the circumstances).

(11) not less than 90 days prior to the decommissioning of any part of the RED Works to submit to AQUIND and to use all reasonable endeavours to agree with AQUIND information relevant to how the decommissioning works will be undertaken and confirming how those works will not adversely impact the AQUIND Works and not to commence the decommissioning of any part of the RED Works until the information relevant to how the decommissioning works will be undertaken is agreed with AQUIND and thereafter to carry out the decommissioning works in accordance with the agreed Information.

(12) where received from AQUIND use all reasonable endeavours to agree with AQUIND the decommissioning information for the AQUIND Works in the interest of confirming how those works will not adversely impact RED Works.

(13) to allow AQUIND and representatives of AQUIND and those employed on their behalf to watch and inspect the construction, Maintenance and decommissioning of the RED Works.

Crossing Agreements and Proximity Agreements

5. AQUIND and RED—

(1) will co-operate and use all reasonable endeavours to enter into Crossing Agreements in respect of each Necessary Crossing to ensure that appropriate arrangements are in place for each of the following scenarios:

- (a) in the event that the RED Works progress in advance of the AQUIND Works, agreement regarding the interface of the Array Cables and the AQUIND Works prior to the construction of the Array Cables in order that such crossings do not prejudice the operation or Maintenance of the Array Cables and shall not prevent the construction of the AQUIND Works or give rise to interference with the operation or Maintenance of the AQUIND Works once constructed;
- (b) in the event that the AQUIND works progress in advance of the RED Works, agreement regarding the crossing points of the AQUIND Works by the Array Cables and the interface of the AQUIND Works and the Array Cables in order that the construction of such crossings by the Array Cables shall not be prevented and shall not give rise to interference with the operation or Maintenance of the AQUIND Works;
- (c) in the event that the AQUIND Works and the RED Works progress simultaneously, agreement for the provision of the crossing points of the AQUIND Works and the Array Cables to ensure that each of the AQUIND Works and the Array Cables can be constructed without preventing the construction of the other and shall not prejudice the operation or Maintenance of the AQUIND Works or the Array Cables.

(2) acknowledge that Crossing Agreements may be required for up to four crossings of the Overlap Area by Array Cables only.

(3) agree that no construction will take place in the Overlap Area in connection with either the AQUIND Works or the RED Works until such time as both parties are satisfied that any relevant necessary Crossing Agreement in respect of such part of those works is in place.

(4) will co-operate and use all reasonable endeavours to enter into Proximity Agreements to regulate the interface of the AQUIND Works and any Wind Turbine Generators, Offshore Substations or Transmissions Cables (where not subject to a Crossing Agreement) comprised in the RED Works within 1000 metres of the boundaries of the Overlap Area.

(5) shall when using all reasonable endeavours expeditiously and diligently negotiate the relevant Crossing Agreement or Proximity Agreement in good faith and shall enter into such Crossing Agreement or Proximity Agreement as soon as is reasonably practicable SAVE THAT neither AQUIND or RED shall be obliged to enter into any Proximity Agreement where there are safety or critical ~~or operational~~ issues that have not been resolved as appropriate at that stage as each shall in its sole discretion determine and where in the opinion of either (acting reasonably) the other is not using all reasonable endeavours in the manner provided for by this sub-paragraph 5 or has identified a matter as one which is safety or critical ~~or would lead to operational issues~~ and this is not agreed by the other, they may refer the matter for dispute resolution in accordance with paragraph 8 hereof.

Costs and Expenses

6. —(1) Save where otherwise agreed in writing between AQUIND and RED (including where agreed in any Crossing Agreement) and subject always to paragraph 10 hereof —

- (a) AQUIND shall be responsible for RED's costs in respect of —
 - (i) approving the AQUIND Pre-Construction Information;
 - (ii) approving information relevant to how the decommissioning of the AQUIND works will be undertaken;
 - (iii) any works which are required to the RED Works to carry out the construction of the AQUIND Works in accordance with the agreed AQUIND Pre-Construction Information, including any costs of RED incurred in undertaking works to RED Works to facilitate the AQUIND Works being undertaken in accordance with the agreed AQUIND Pre-Construction Information;
 - (iv) any works which are required to the RED Works to carry out the decommissioning of the AQUIND Works in accordance with the agreed decommissioning information, including any costs of RED incurred in undertaking works to RED Works to facilitate the AQUIND Works being decommissioned in accordance with the agreed decommissioning information; and
 - (v) the reasonable costs for RED watching and inspecting the construction and decommissioning of the AQUIND Works;
- (b) RED shall be responsible for AQUIND's costs in respect of —
 - (i) approving the RED Pre-Construction Information;
 - (ii) approving information relevant to how the decommissioning of the RED works will be undertaken;
 - (iii) any works which are required to the AQUIND Works to carry out the construction of the RED Works in accordance with the agreed RED Pre-Construction Information, including any costs of AQUIND incurred in undertaking works to AQUIND Works to facilitate the RED Works being undertaken in accordance with the agreed RED Pre-Construction Information;
 - (iv) any works which are required to the AQUIND Works to carry out the decommissioning of the RED Works in accordance with the agreed decommissioning information, including any costs of AQUIND incurred in undertaking works to AQUIND Works to facilitate the RED Works being decommissioned in accordance with the agreed decommissioning information; and
 - (v) the reasonable costs for AQUIND watching and inspecting the construction and decommissioning of the RED Works;
- (c) When incurring costs, expenses or losses which are payable by the other AQUIND and RED must at all times act reasonably and in the same manner as they would if they were funding the cost, expenses or losses themselves.

Consultation and Co-operation

7. —(1) AQUIND and RED shall act in good faith to co-operate with, and provide assistance to, each other as may be required to give effect to the provisions of this Part 8 of Schedule 10 to the RED order and otherwise do nothing to hinder or prevent the other party from the proper execution of any right or obligation allowed or required under this Part 8 of Schedule 10 to the RED ~~order~~ Order or the carrying out of the AQUIND Works or the RED Works.

(2) Where any approval, agreement, consent or confirmation of AQUIND or RED is required pursuant to the terms of this Part 8 of Schedule 10 to the RED ~~order~~ Order (including for the avoidance of doubt in connection with any method statement), it shall not be unreasonably withheld or delayed.

Dispute Resolution

8. —(1) Save for matters of interpretation (which shall be matters for the Court) in the event of any dispute arising between AQUIND and RED in respect of any matter contained in this Part 8 of Schedule 10 to the RED Order including questions as to the propriety and/or necessity of any cost or and any question of reasonableness of the same AQUIND and RED will use reasonable endeavours to attempt to resolve that dispute amicably (including holding a meeting attended by at least one representative from each party if considered appropriate) for a period of 20 Working Days from the date on which any party notifies the other party in writing that a dispute has arisen.

(2) In the event that the dispute has not been resolved amicably following the expiry of the period of 20 Working Days referred to in sub-paragraph 1 above despite the parties using reasonable endeavours to resolve the dispute amicably, any party may refer the dispute to an expert ("**Expert**") to be agreed upon between the parties hereto or at the request and option of either of them to be nominated at their joint expense by or on behalf of the President of the Institution of Civil Engineers and the Expert's decision shall (in the absence of manifest error) be final and binding on the parties hereto and whose costs shall be borne by the parties at his discretion.

(3) The Expert shall—

- (a) have at least ten years post qualification experience in the subject matter of the dispute;
- (b) be appointed subject to an express requirement that he reaches a decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event in not more than 40 Working Days from the date of his appointment to act;
- (c) be required to give notice to each of the parties within 5 Working Days of appointment inviting each of them to submit within 10 Working Days of that notice written submissions and supporting material which shall also be issued by the parties to each other within the same 10 Working Day period and shall afford to each of the parties an opportunity to make counter submissions within a further 5 Working Days in respect of any such submission and material and disregard any representations made out of time;
- (d) give its decision in writing within 15 Working Days from receipt of any counter submissions or in the event that there are no counter submissions within 15 Working Days of receipt of the written submissions and supporting material with reasons for the decision;
- (e) make a determination as to payment of the Expert's costs and the parties' legal and professional costs of engaging in the dispute resolution process under this paragraph 8 of this Part 8 of Schedule 10 to the RED Order.

Confidential Information

9. AQUIND and RED must not disclose any Confidential Information to any other person (save where such person is bound by a legally enforceable requirement and indemnity which benefits the party who provided the relevant Confidential information to keep such information confidential) except with the other party's prior consent, which may not be unreasonably withheld or delayed but which may be provided subject to reasonable conditions.

Indemnities and Insurance

10.—(1) AQUIND shall indemnify RED in respect of all costs and expenses incurred (including legal, surveying and engineering costs and disbursements) and damages or losses suffered to the extent that the same are reasonably incurred in connection with any act or omission by AQUIND that is in breach of this Part 8 of Schedule 10 to the RED Order;

(2) RED shall indemnify AQUIND in respect of all costs and expenses incurred (including legal, surveying and engineering costs and disbursements) and damages or losses suffered to the extent that the same are reasonably incurred in connection with any act or omission by RED that is in breach of this Part 8 of Schedule 10 to the RED Order;

(3) Nothing in this Part 8 of Schedule 10 to the RED Order imposes any liability on AQUIND or RED with respect to any damage, cost, expense or loss which is attributable to the negligence of the other or of any person in the other's employment or of the other's contractors or agents and any liability of AQUIND or RED (as is relevant) under this Agreement must be reduced proportionately to the extent to which any damage, cost, expense or loss is attributable to the negligence of the other or of any person in the other's employment or of the other's contractors or agents.

(4) Nothing in this paragraph 10 of Part 8 of Schedule 10 to the RED Order is intended and nor shall it be construed as an attempt by any party to this Agreement to exclude or restrict liability for:

- (a) death or personal injury from its negligence or by the negligence of a person for whom it is vicariously liable (negligence being defined in section 1(1) of the Unfair Contract Terms Act 1977); and/or
- (b) any losses caused by the fraud of either party, its contractors or any other person for whom that party is responsible.

(5) AQUIND and RED must give the other reasonable notice of any claim or demand and no settlement, admission of liability or compromise or demand must be made, unless payment is required in connection with a statutory compensation scheme without first consulting the other and considering its representations.

(6) Each of AQUIND and RED shall use reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, losses, demands or penalties, to which the indemnities in this paragraph 10 applies and if requested to by the other, shall provide an explanation of how any such claims have been minimised and each of AQUIND and RED shall only be liable for claims reasonably incurred by the other, and any action taken by a party pursuant to this paragraph 10 will be at the reasonable cost of the other party.

(7) AQUIND must not commence construction (and must not permit the commencement of such construction) of any part of the AQUIND Works until RED is satisfied acting reasonably (but subject to all necessary regulatory constraints) that AQUIND or its contractor has procured acceptable insurance (and provided evidence to RED that it must maintain such acceptable insurance for the construction period of the AQUIND Works from the proposed date of commencement of construction of the AQUIND Works) and RED has confirmed the same in writing to AQUIND.

(8) RED must not commence construction (and must not permit the commencement of such construction) of any part of the RED Works until AQUIND is satisfied acting reasonably (but subject to all necessary regulatory constraints) that RED or its contractor has procured acceptable insurance (and provided evidence to AQUIND that it must maintain such acceptable insurance for the construction period of the RED Works from the proposed date of commencement of construction of the RED Works) and AQUIND has confirmed the same in writing to RED.

(9) AQUIND must not commence operation or Maintenance (and must not permit the commencement of operation or Maintenance) of any part of the AQUIND Works until RED is satisfied acting reasonably (but subject to all necessary regulatory constraints) that AQUIND or its contractor has procured acceptable insurance (and provided evidence to RED that it must maintain such acceptable insurance for the period of Maintenance in respect of the AQUIND Works from the proposed date of commencement of operation of the AQUIND Works and to provide evidence of renewal of such insurance as appropriate) and RED has confirmed the same in writing to AQUIND.

(10) RED must not commence operation and Maintenance (and must not permit the commencement of operation and Maintenance) of any part of the RED Works until AQUIND is satisfied acting reasonably (but subject to all necessary regulatory constraints) that RED or its contractor has procured acceptable insurance (and provided evidence to AQUIND that it must maintain such acceptable insurance for the period of Maintenance in respect of the RED Works from the proposed date of commencement of operation of the RED Works and to provide evidence of renewal of such insurance as appropriate) and AQUIND has confirmed the same in writing to RED.

(11) AQUIND must not commence decommissioning (and must not permit the commencement of decommissioning) of any part of the AQUIND Works until RED is satisfied acting reasonably (but subject to all necessary regulatory constraints) that AQUIND has procured acceptable insurance (and provided evidence to RED that it must maintain such acceptable insurance for the decommissioning period of the AQUIND Works from the proposed date of commencement of decommissioning of the AQUIND Works) and RED has confirmed the same in writing to AQUIND.

(12) RED must not commence decommissioning (and must not permit the commencement of decommissioning) of any part of the RED Works until AQUIND is satisfied acting reasonably (but subject to all necessary regulatory constraints) that RED has procured acceptable insurance (and provided evidence to AQUIND that it must maintain such acceptable insurance for the decommissioning period of the RED Works from the proposed date of commencement of decommissioning of the RED Works) and AQUIND has confirmed the same in writing to RED.

Effect

11. This Part 8 of Schedule 10 to the RED Order shall cease to be of effect where:

- (a) the application for the AQUIND Order is withdrawn, in which case AQUIND shall provide RED with written notification of such withdrawal within 10 Working Days of AQUIND notifying the Secretary of State of the withdrawal and this Part 8 of Schedule 10 to the RED Order shall cease immediately on the date of delivery of the notice in accordance with paragraph 12 below;
- (b) the Secretary of State having decided the application for the AQUIND Order decides to refuse development consent and AQUIND not choosing to bring a judicial review in relation to such refusal, in which case AQUIND will provide RED with written notification thereof within 10 Working Days of its decision not to bring a judicial review or the period to bring a judicial review expiring without any judicial review being lodged by AQUIND and this Part 8 of Schedule 10 to the RED Order will terminate immediately on the date of delivery of the notice in accordance with paragraph 12 below or within 10 Working Days the period to bring a judicial review expiring without any judicial review being lodged by AQUIND (whichever is sooner);
- (c) if following the final determination of any challenge proceedings in respect of the decision in relation to the AQUIND Order a decision by the Secretary of State to refuse development consent is upheld;
- (d) if following the final determination of any challenge proceedings in respect of the decision in relation to the AQUIND Order the decision is quashed and the Court orders the application for the AQUIND Order to be remitted to the Secretary of State and the application for the AQUIND Order is subsequently refused and AQUIND chooses not to bring a judicial review in relation to such refusal, in which case AQUIND will provide RED with written notification thereof within 10 Working Days of its decision not to bring a judicial review or the period to bring a judicial review expiring without any judicial review being lodged by AQUIND and this Part 8 of Schedule 10 to the RED Order will terminate immediately on the date of delivery of the notice in accordance with paragraph 12 below or within 10 Working Days of the period to bring a judicial review expiring without any judicial review being lodged by AQUIND (whichever is sooner);
- (e) if following the AQUIND Order being made the works authorised by the AQUIND Order are not commenced before the period within which they must commence expires.

Notices

12.—(1) Any notice given under or in relation to this Part 8 of Schedule 10 to the RED Order shall be in writing and shall be deemed to be sufficiently served if addressed to the AQUIND, or RED, as the case may be, and sent by recorded delivery or registered post to the address of the parties given in this paragraph 12 or to such other address as they may from time to time designate by written notice to the other.

(2) Any notice sent in accordance with this paragraph 12 shall be deemed, in the absence of evidence of earlier receipt, to have been delivered two days after posting or dispatch, exclusive of the day of posting.

(3) Any notice sent by RED to AQUIND in accordance with this paragraph 12 shall be addressed to the Managing Director, and shall also be sent to AQUIND by e-mail to info@aquind.co.uk

(4) Any notice sent by RED in accordance with this paragraph 12 shall be addressed to [XXX] and shall also be sent to RED by e-mail to [XXX].

Appendix G

171207 Cricklewood CPO1-2-DL



Department for
Communities and
Local Government

Chris Robinson
Eversheds LLP
Eversheds House
70 Great Bridgewater Street
Manchester
M1 5ES

Please ask for: Edward Chapman

Tel: [REDACTED]

Email: [REDACTED]

Your ref:

Our ref: PCU/CPO/N5090/75474 and
PCU/CPO/N5090/75475

Date: 7 December 2017

Dear Mr Robinson

**The Town and Country Planning Act 1990: Section 226(1)(a)
The Local Government (Miscellaneous Provisions) Act 1976: Section 13
The Acquisition of Land Act 1981
The London Borough of Barnet (Brent Cross Cricklewood) Compulsory
Purchase Orders (No. 1 & 2) 2015 ('Orders')**

- 1 The report of the Inspector, Richard Clegg BA(Hons) DMS MRTPI dated 6 July 2017 who held a public local inquiry into the above Orders between 17 May and 27 July 2016 has been considered. A copy of the Inspector's report is enclosed. References in this letter to paragraphs in the Inspector's report are indicated by the abbreviation IR, followed by the relevant paragraph number. Cross references to other paragraphs in this decision letter are indicated by the abbreviation DL, followed by the relevant paragraph number.
- 2 The Orders concern the Cricklewood, Brent Cross and West Hendon Regeneration Area ('RA'). The cases for and against the confirmation of the Orders were presented together at inquiry and considered together in the Inspector's Report. Therefore, the Secretary of State has adopted the same approach in this decision letter.
- 3 The London Borough of Barnet (Brent Cross Cricklewood) Compulsory Purchase Order (No. 1) 2015 ('CPO 1') was made under section 226(1)(a) of the Town and Country Planning Act 1990 and the Acquisition of Land Act 1981 by the London Borough of Barnet ('the Council') on 20 April 2015. If confirmed, CPO 1 would authorise the compulsory purchase of the Order lands summarised at IR 2.4-2.11. The purposes of CPO 1 are to facilitate the development, redevelopment, or improvement of the Order lands by way of a

mixed-use scheme comprising retail, leisure and office development; hotel development; industrial, storage and distribution development; community facilities; residential development; car parking; public transport infrastructure and facilities; major infrastructure and highway works; and public realm and environmental improvement works; thereby contributing towards the promotion and/or the improvement of the economic, social and environmental wellbeing of the area.

- 3 When the Inquiry opened, there were 68 remaining objections to CPO 1, and 1 non-statutory additional objection. During the course of the inquiry, 3 objections were withdrawn and 4 late non-statutory objections were lodged to CPO 1. The main grounds of objection to CPO 1 cover a range of matters, but, in simple terms, it is said by the objectors that the Council have failed to demonstrate a compelling case in the public interest necessary to justify confirmation of CPO 1.
- 4 The London Borough of Barnet (Brent Cross Cricklewood) Compulsory Purchase Order (No. 2) 2015 ('CPO 2') was made under section 226(1)(a) of the Town and Country Planning Act 1990 and the Acquisition of Land Act 1981 by the Council on 20 April 2015. If confirmed, CPO 2 would authorise the compulsory purchase of the Order lands summarised at IR 2.12-2.14. The purposes of CPO 2 are to facilitate the development, redevelopment or improvement of the Order lands by way of a mixed- use scheme comprising retail development; community facilities; residential development; leisure development; car parking; infrastructure and highway works; and public realm and environmental improvement works thereby contributing towards the promotion and/or the improvement of the economic, social and environmental wellbeing of the area.
- 5 When the Inquiry opened, there were 38 remaining objections to CPO 2, and 5 non-statutory additional objections. During the course of the inquiry, 1 late objection was received from a qualifying person and 3 late non-statutory objections were lodged to CPO 2. The main grounds of objection to CPO 2 cover a range of matters, but, in simple terms, it is said by the objectors that the Council have failed to demonstrate a compelling case in the public interest necessary to justify confirmation of CPO 2

Inspector's recommendations and summary of the decisions

- 6 The Inspector has recommended that CPO 1 be confirmed subject to the modifications set out at IR 13.1. The Secretary of State agrees with the Inspector's conclusions concerning CPO 1, except where stated, and agrees with his recommendation, and has decided to confirm CPO 1 with the modifications set out at IR 13.1 and, in addition, with the further modifications requested by the Council in their letters of 5 October 2017 and 29 November 2017.
- 7 The Inspector has recommended that CPO 2 be confirmed without modification. The Secretary of State agrees with the Inspector's conclusions as to CPO 2,

except where stated, and agrees with his recommendation, and has decided to confirm CPO 2 without modification.

- 8 The Inspector's Report contains a description of the Order lands for CPOs 1 & 2 (IR 2.1-2.14), an analysis of the adopted planning framework (IR 3.1-3.9) and planning permissions (IR 4.1-4.4). The Inspector's Report summarises the parties submissions made at the local inquiry at IR 5.1-11.15. The Inspector's overall conclusions on the Orders are set out in IR12.91-12.95, and his recommendations are at IR 13.1.

Matters arising since the close of the inquiry

- 9 On 13 November 2017 the Secretary of State wrote to remaining objectors to afford them an opportunity to comment on the following matters
- a. The publication in December 2016 of the DCLG Estate Regeneration National Strategy (<https://www.gov.uk/guidance/estate-regeneration-national-strategy>)
 - b. The potential Public Sector Equality Duty impacts arising under section 149 of the Equalities Act 2010 (<https://www.legislation.gov.uk/ukpga/2010/15/section/149>); and
 - c. The London Borough of Barnet's letter of 5th October 2017 requesting modifications to the made to the London Borough of Barnet (Brent Cross Cricklewood) Compulsory Purchase Order (No. 1) 2015 in the event that the Secretary of State modifies CPO 1 to remove parts of plot 236, 236a and 237 and part of plot 108 (MAN_003-#3223120-v1-Letter_to_Edward_Chapman_National_Planning_Casework....pdf)
- 10 The Secretary of State received responses from Helen Pitsillis and Michael Mangi, Helen Pitsillis, Marek and Ewa Dec and three identical responses from Pria Lad, Sachin Mevada and Raschid Jaffrey. In summary, these responses object to the removal of plot 108 from the Order and raise concerns regarding: the consultation process; the loss of social housing; the resident engagement and relocation arrangements not according with the DCLG Estate Regeneration National Strategy ('National Strategy'); and a lack of detail being provided about the proposed modifications to CPO 1.
- 11 The Secretary of State has also received a response from Eversheds Sutherland on behalf of the Council. The Council consider that the Brent Cross Cricklewood ('BXC') scheme is not a scheme of estate regeneration to which the National Strategy is aimed at. However, insofar as the National Strategy raises considerations that are of general relevance to the protection and engagement of residents, the Council consider that the approach it has taken accords with the objectives of the National Strategy. As to the potential equalities impacts, the Council consider that the evidence they submitted to the public inquiry and the contents of their letter of 20 December 2016 address equalities impacts. As to the modifications proposed in their letter of 5th

October 2017, the Council reiterated their position that if the Secretary of State is minded to modify CPO 1 to remove parts of plots 236, 236a, 237 and 108, that the proposed modifications remain necessary.

- 12 The Secretary of State has carefully considered all the responses received from the reference back exercise and has taken account of the matters raised by parties in the representations when making his decision on the Orders.

Post Inquiry Correspondence

- 13 Following the close of the public inquiry, the Secretary of State received correspondence from Ms N Choudhury, representing the Whitefield Estate Residents which included a petition objecting to related planning applications, raising concerns regarding the Council's processing of the Orders and related planning applications, and, on 11 September 2017, requesting a further CPO inquiry. The Secretary of State has also received correspondence from Eversheds Sutherland dated 12 September 2017 and 27 September 2017 acting on behalf of the Council, which responded in detail to Ms Choudhury's correspondence. A list of all the representations which have been received since the close of the inquiry is at Annex A. Copies of these letters may be obtained on written request to the address at the foot of the first page of the letter. The Secretary of State has taken all post inquiry representations into account in reaching his decision on the Orders

Request to reopen the Inquiry

- 14 The letter from Ms N Choudhury requested that the inquiry be reopened to allow the Whitefield Estate residents the opportunity to challenge the proposed loss of the Whitefield Estate, and for further consideration to be given to remove the Whitefield Estate from the Orders. The Secretary of State has given careful consideration to the request to exercise his discretionary power to reopen the inquiry pursuant to rule 18(6) of the Compulsory Purchase (Inquiries Procedure) Rules 2007, but considers that it is unnecessary to do so. He has carefully considered the contents of the post inquiry correspondence received from Ms Choudhury and has taken account of the concerns raised and her request to modify the Orders when making his decision. He notes that the Whitefield Estate residents had the opportunity during the 20 day public inquiry to put forward objections to the Orders being confirmed and to test the Council's justification for the Orders. They have also been given the opportunity to make representations on the matters set out at paragraph 9, above.

Policy considerations

- 15 IR 12.2 refers to certain factors in paragraphs 74 and 76 of the *Guidance on Compulsory Purchase process and The Crichton Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion* ('the Guidance') in consideration of which the Secretary of State's decision on the Orders is made.

Planning Framework

- 16 The Secretary of State agrees with the Inspector that the relevant planning policies are those summarised at IR 3.1-3.9. He agrees with the Inspector that

the decision whether or not to confirm the Orders is not an opportunity to revisit the planning merits of the scheme for the regeneration of the Brent Cross Cricklewood area ('BXC'), which received outline permission in 2014 (IR 12.2) . For the reasons given by the Inspector at IR 12.4-12.8, the Secretary of State agrees with the Inspector's analysis concerning the adopted planning framework and his conclusion that the particular purposes for which the Order lands would be acquired are consistent with the policy objectives in the Development Plan and the Development Framework (IR 12.9).

Well-being

17 The Secretary of State has carefully considered the Inspector's analysis as to the extent to which the proposed purpose of the Orders will contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of the area at IR12.10-12.37.

Economic wellbeing

18 The Secretary of State agrees with the Inspector's analysis concerning economic wellbeing at IR12.10-12.20. The Secretary of State agrees with the Inspector for the reasons given that the redevelopment proposals on the Order lands are expected to provide a substantial number of new jobs in retail, leisure and business uses, and significantly that the construction of key infrastructure would be fundamental to the establishment of other employment uses elsewhere in the area (IR 12.21). Overall, and for the reasons given by the Inspector, the Secretary of State agrees that the proposed redevelopment would make a significant contribution to the economic wellbeing of the area (IR 12.21).

Social wellbeing

19 As to social well-being, the Secretary of State agrees with the Inspector that there is a need for a considerable level of additional housing both in London as a whole and in Barnet. He notes the scheme is expected to provide approximately 7,500 homes overall, of which about 1,800 would be built on the Order lands and agrees with the Inspector that this provision of housing would make an important contribution to Barnet's 10 year target in the London Plan and the 15 year figure in the Core Strategy (IR 12.22). He agrees with the Inspector for the reasons given that the development on the Order lands would also bring forward a significant number of affordable dwellings and agrees that there is a clear need for these in the Borough (IR 12.24).

20 The Secretary of State notes that the scheme includes a range of community facilities, certain of which would be within the Order Lands (IR 12.29). He agrees with the Inspector for the reasons given that while the new secondary school would not represent an additional facility it may accommodate library space, and two police units are proposed (IR 12.29). He agrees with the Inspector for the reasons given that the key highways infrastructure which would be built on the Order Lands would be of importance in supporting the development of other community facilities in the wider BXC area (IR 12.29).

- 21 The Secretary of State has carefully considered the objections of the residents of the Whitefield Estate summarised by the Inspector at IR 8.55, IR 9.14-9.27, IR 10.1-10.32, IR 11.2, IR 11.6, and the Inspector's analysis at IR 12.22-12.31. He notes concerns have been raised, among other things, in respect of the move to replacement accommodation, the cost of accommodation, implications of the shared equity scheme, tenancy conditions, and the availability of information. He has also taken account of the representations received from parties concerning the implications of the National Strategy which was published in December 2016 after the Council's Residential Relocation Strategy ('RRS'). The Secretary of State considers that the Council have undertaken early engagement with residents which is ongoing. The Secretary of State considers that the Council have worked collaboratively with residents and their representatives, among other things, through the appointment of a resident independent adviser and the establishment of a steering group comprising of tenants, leaseholders and freeholders to engage with the development partners (IR 5.76). The Secretary of State considers that account has been taken by the Council in the RRS of the differing impacts of the scheme for secure tenants, freeholders and leaseholders (IR 12.25) and notes the proposed relocation arrangements and opportunities for shared ownership and equity in the RRS. Overall, for the reasons above, the Secretary of State considers that the actions of the Council and its development partners accord with the general principles of the National Strategy as to resident engagement and protection.
- 22 The Secretary of State agrees with the Inspector that the disruption caused by the demolition of the Whitefield Estate and the relocation of its residents would have an adverse effect on the community (IR 12.31). While he agrees with the Inspector for the reasons given, that the relocation arrangements in the RRS for secure tenants, freeholders, and leaseholders, are adequate (IR 12.31), he notes that private tenants will not be eligible for rehousing as part of the scheme. Overall, however, the Secretary of State agrees with the Inspector for the reasons given that these disbenefits are outweighed by the contributions which the scheme makes to housing provision in general and affordable housing in particular, together with improvements to community facilities and accessibility (IR 12.31). Accordingly, the Secretary of State agrees with the Inspector's conclusion that the scheme would contribute positively to the social well-being of the area (IR 12.31).

Environmental wellbeing

- 23 The Secretary of State agrees with the Inspector's analysis as to environmental wellbeing at IR 12.32-12.37 and his conclusion for the reasons given that the scheme provides an opportunity to significantly upgrade the built environment of the area, without causing undue detriment to nature conservation interests. Accordingly, the Secretary of State agrees with the Inspector for the reasons given that the scheme would make an important contribution to the environmental well-being of the area (IR12.37).

Conclusions on wellbeing

- 24 Overall, the Secretary of State concludes that the requirements of Section 226(1)(A) of the Town and Country Planning Act 1990 are satisfied because he considers, in agreement with the Inspector, that the Orders will significantly contribute to the economic well-being of the area, and will positively contribute to the social and environmental well-being of the area (IR 12.92).

Possible impediments

- 25 Having regard, among other things, to paragraphs 15 and 75 of the Guidance, the Secretary of State has carefully considered the Inspector's analysis at IR 12.38-12.47 concerning the possible impediments to the scheme going ahead

Planning Permission

- 26 The Secretary of State notes that outline planning permission for the scheme was granted in 2014, which provides the framework within which reserved matters applications should come forward, and an associated planning agreement contains a range of requirements and restrictions, including obligations to provide critical infrastructure in phases 1 and 2 of the redevelopment scheme (IR 12.38). He notes that reserved matters have already been approved for phases 1A (north) and 1A (south) covering key infrastructure and replacement dwellings for the Whitefield Estate residents living in the CPO 1 Order lands (IR 12.39). He notes that the Order lands primarily include development within phase 1, but some plots within phases 2, 6 and 7 are within this part of the RA. He further notes conditions 1.1-1.3 of the outline planning permission prescribe the timescales for reserved matters for all phases of the scheme (IR 12.40). Overall, and for the reasons given, the Secretary of State agrees with the Inspector that there is no obvious reason why the remaining reserved matters approvals for those parts of the Scheme within the Orders lands should not be forthcoming (IR 12.40).

Funding and viability

- 27 The Secretary of State has carefully considered the concerns expressed by objectors about the funding and viability of the scheme. The Secretary of State has had regard to the financial commitments that have already been entered into by the development partners, and considered the Inspector's analysis on this issue at IR 12.41-12.43. Overall, the Secretary of State agrees with the Inspector's conclusion at IR12.43 for the reasons given that funding would be available, both for the acquisition of interests covered by CPOs 1 and 2, and for carrying out the intended redevelopment, and that the scheme would be financially viable.

CPO 1- Retention of anchor tenants in BXSC

- 28 The Secretary of State agrees with the Inspector for the reasons given at IR 12.44-12.45 that it is unlikely any of the anchor tenants would leave due to the CPO process and the associated arrangements for extending BXCS.

CPO 2- Relationship to the proposed railway station

- 29 The Secretary of State notes a new railway station is proposed to the west of the Order Lands, and the Brent Cross South proposals have been developed

on the basis that the station would be provided, and delivery of the station is dependant on the confirmation of CPO 3 (IR 12.46)

Conclusions on possible impediments

30 Overall, the Secretary of State agrees with the Inspector that the Council have demonstrated that funding would be available to deliver the scheme and although plans for the Brent Cross South elements of the scheme are associated with the provision of a new station contingent on confirmation of CPO 3 that there is nothing before him to indicate that they would be dependent on that infrastructure (IR 12.47). Accordingly, the Secretary of State agrees with the Inspector that delivery of the scheme is unlikely to be blocked by any potential impediments to implementation (IR 12.47).

Achievement of purposes by other means

31 The Secretary of State notes that the purposes of both Orders are to bring about the development, redevelopment or improvement of the Order lands by way of a mixed use scheme and there are no alternative proposals for the comprehensive development of the land covered by either CPO 1 or CPO 2 (IR 12.48).

32 Having regard, among other things, to paragraph 76 of the Guidance, the Secretary of State has carefully considered the appropriateness of the alternative proposals put forward by several objectors for part of the Order lands.

CPO 1- Fenwick Store, BXSC

33 The Secretary of State has carefully considered the appropriateness of the alternative proposal put forward by Fenwick, summarised at IR 8.25- 8.51 and the Inspector's analysis in this regard at IR 12.49-12.67 (with which the Secretary of State agrees). He notes that Fenwick considers that the works to build the extension and to integrate it with the existing BXSC could be achieved without acquisition of its leasehold interest and considers its proposed inclusion in CPO 1 is unnecessary and disproportionate. Fenwick seeks the modification of CPO 1 to exclude its leasehold interest. It considers that the purposes for which the Council is intending to acquire its leasehold interest could be achieved by the acquisition of new rights over its land pursuant to section 13 of the Local Government (Miscellaneous Provisions) Act 1976 ('LG(MP)A'). It considers that the Council can use its powers to override easements and other rights in section 203 of the Housing and Planning Act 2016 ('HPA 2016') and/or rely on the terms of Fenwick's undertaking to cover matters that cannot be addressed through the compulsory acquisition of new rights over its land.

34 The Secretary of State agrees with the Inspectors conclusions on this issue in their entirety and makes the following observations in particular. As to whether the works affecting the Fenwick store could be carried out by the Council relying on its statutory powers in s203 HPA 2016, the Secretary of State agrees with the Inspector for the reasons given (IR 12.51) that clause 5(1) and 5(4) of Fenwick's lease do not fall within the scope of s203 HPA 2016 as a "*breach of*

a restriction as to the user of land by virtue of a contract” because the provisions are positive obligations rather than restrictions. As to whether the acquisition of the new rights proposed falls within the scope of s13 LG(MP)A 1976, the Secretary of State agrees with the Council (whose submissions on this point are summarised at IR 5.26) that s13 enables acquiring authorities to acquire new rights over land but does not authorise the creation of new rights that override rights or other provisions contained in a lease. As to whether the Council can rely on Fenwick’s undertaking to enable works affecting Fenwick’s interest to be carried out, the Secretary of State agrees with the Council’s submissions summarised at IR 5.29 as to the in-principle difficulty with Fenwick’s undertaking and agrees with the Inspectors concerns about reliance on the terms of the undertaking in any event (IR12.65). Concerning whether the items in schedule 1 to Fenwick’s undertaking should be required to be included in the works through an undertaking by the Council before CPO 1 is confirmed, the Secretary of State agrees with the Inspector for the reasons given that there is not a realistic prospect of a further, more onerous, undertaking being secured (IR 12.6).

- 35 Furthermore, and in any event, the Secretary of State agrees with the Council’s submission summarised at IR 5.30 that there is, at the least, material uncertainty with the alternative proposals put forward by Fenwick and considers that this is in itself a compelling consideration in the circumstances (in particular having regard to the factors highlighted by the Council at IR 5.30). Overall, therefore, the Secretary of State agrees with the Inspector that the alternative proposals put forward by Fenwick do not provide the necessary certainty that the works to deliver the extension to BXSC could proceed (IR 12.67).

CPO 1- Other units at Brent Cross Shopping Centre

- 36 The Secretary of State has carefully considered the appropriateness of the alternative proposal put forward by objectors in relation to the land at Cricklewood Broadway/Cricklewood Lane and the Inspector’s analysis on this issue at IR 12.69-12.77. He notes the suggestions from some objectors that it is not necessary to carry out some of the proposed highways and junction modifications. He notes alterations for 9 junctions were approved as part of the outline planning permission, and agrees with the Inspector for the reasons given that these alterations are part of a single strategic package of highways works put forward in the Consolidated Transport Assessment as mitigation measures necessary to support the end-state development (IR 12.70), and also notes that condition 20.10 of the outline planning permission requires the practical completion of the A407/A5 junction works to be completed before the occupation of any part of the development to the south of the North Circular Road (IR12.70). While suggestions have been made that alterations to the A5/A407 junction are not necessary, the Secretary of State agrees with the Inspector for the reason given, that no detailed evidence has been put forward of the likely impact elsewhere on the network as a consequence of the omission of one part of the package of highway works (IR 12.70).

- 37 As to the A5/407 junction itself, the Secretary of State agrees with the Inspector's conclusion at IR 12.77 for the reasons given (IR 12.71- 12.77) that there is evidence that the junction performs unsatisfactorily at present, and that implementation of the proposed works would result in a marked improvement. Overall, and for the reasons given by the Inspector, the Secretary considers that omitting the realignment of the A5/407 junction from the scheme would not represent an appropriate alternative proposal, even disregarding the need for a further planning application and variation of the planning agreement (IR 12.77)

CPO 2- Whitefield Estate

- 38 The Inspector has carefully considered the Inspector's analysis at IR 12.78-12.82 concerning the Whitefield Residents objections to the acquisition and demolition of the Whitefield Estate and has had regard to the appropriateness of the alternative proposals put forward by them. The Secretary of State agrees with the Inspector for the reasons given that the Whitefield Estate occupies a key position in the RA (IR 12.78) and that retention of all or part of the Whitefield Estate would impede connectivity and would be an obstacle to the establishment of a town centre embracing this central position on the south side of the A406 (IR 12.79). He agrees with the Inspector for the reasons given that the retention of the Whitefield Estate would disrupt and fragment the redevelopment, in contrast to the coherent urban structure envisaged and such a variation of the scheme would require a further planning permission with the inevitable attendant delay (IR 12.79). He also agrees with the Inspector that the removal of Whitefield Estate from the Order lands would represent a significant change to the basis on which Argent Related became involved in Brent Cross South and could, therefore, affect the successful delivery of regeneration in this area (IR12.79).
- 39 As to Ms Choudhury's alternative proposal, the Secretary of State agrees with the Inspector that in practical terms the implications of this alternative would not be materially different from the Residents Group's proposal to exclude the Whitefield Estate as a whole and agrees that the Choudhury alternative would still threaten connectivity and the creation of a coherent urban structure and adjustments to the intended layout would not overcome these fundamental problems (IR 12.80)
- 40 As to Ms Choudhury's suggestion that development of the estate be undertaken by a community group the Secretary of State agrees with the Inspector for the reasons given that this approach would lead to potential disruption, and that there is no evidence before him to demonstrate that this approach would be a practical option, or that there is a community group willing to take such a proposal forward (IR 12.81).
- 41 Concerning the opposition from the Whitefield Estate residents and others to the proposed position of the living bridge, the Secretary of State agrees with the Inspector for the reasons given that construction of the living bridge catering specifically for pedestrians and cyclists, and designed to mitigate the intrusive effects of the main road, would play an important role in ensuring good

connectivity between BXSC and other development zones, and it is fundamental to achieving a unified town centre (IR 12.82). The Secretary of State also agrees with the Inspector, for the reasons given that the position of the living bridge is tightly constrained, and having regard to other infrastructure, does not consider that there is the opportunity to construct this facility clear of the CPO 1 Order lands (IR 12.82).

Other matters

- 42 As to the effect on the forecourt at 111 Highfield Avenue, the Secretary of State agrees with the Inspector for the reasons given that the improvement of the A41/A406 junction, as part of a package of gateway junction works, is fundamental to delivering the regeneration scheme, and the environmental improvement due to the removal of strategic road traffic justify the retention on plot 244 in CPO 1 (IR 12.83). Concerning the effect on the forecourt at 1 Claremont Road, the Secretary of State agrees with the Inspector for the reasons given that the proposed acquisition of land and rights would not adversely affect parking provision at the property (IR 12.84).
- 43 Concerning the outstanding objection in respect of the Brent Cross bus station and associated rest room in respect of CPO 1, the Secretary of State notes that an agreement has been reached that compulsory purchase powers in respect of these plots would not be exercised if agreements for the relocation of the bus station had concluded and notes the joint statement confirming that an agreement in relation to the bus station has been completed and once the necessary property agreements have been settled and exchanged that these objections will be withdrawn (IR 12.85).
- 44 Concerning the adequacy of consultation and negotiations, the Secretary of State has considered the details of the Council's consultation programme concerning the relocation of residents from the Whitefield Estate (IR 5.76). The Secretary of State notes that the Council can demonstrate a long history of consultation with residents, and that this is acknowledged in the responses from some of the residential objectors. As to Mr and Mrs Barker's objection, he notes there have been negotiations with the Council with the parties a long way apart on value and agrees with the Council that absent the inclusion of their interest in CPO 2 that there is a significant risk that it will not be possible to acquire their land by agreement before the land is required (IR 5.85). As to Hope Construction Materials objection to CPO 2, he notes the company have entered into negotiations with the Council in respect of an alternative site (IR 12.89).
- 45 Overall, and having regard to paragraph 2 of the Guidance, the Secretary of State considers that the Council have demonstrated that they have taken reasonable steps to acquire the Order lands by agreement.

State aid

- 46 Concerning Mr Cox's objection, the Secretary of State agrees with the Inspector for the reasons given that as the Orders would simply empower the

Council to acquire the Order Lands that they cannot themselves constitute state aid (IR 12.90).

Modifications to CPO 1

- 47 The Secretary of State agrees with the Inspector's conclusion at IR12.94 that the whole of plots 108, 236, 236a and 237 for CPO 1 are not required for the development, for the reasons given in IR12.17 and IR12.20. Accordingly, and having regard to paragraph 40 of the Guidance, the Secretary of State has decided to exercise his power to modify CPO 1 to remove those parts of these plots as recommended by the Inspector at IR 13.1.
- 48 The Secretary of State has carefully considered the Council's request for further modifications to be made to CPO 1 as particularised in their letter of 5 October 2017 and parties representations on the proposed modifications sought as part of the reference back exercise. Having regard to the Council's request, parties representations, and paragraph 40 of the Guidance, the Secretary of State considers these modifications are necessary to give effect to the commitments in the Undertakings and has therefore decided to exercise his power to further modify CPO 1 as requested by the Council.
- 49 The Secretary of State has also carefully considered the Council's request dated 29 November 2017 to further modify CPO 1 to remove part of plot 198, part of plot 242, and the entirety of plot 243 as they are no longer required in whole or part for the purposes of the delivery of the CPO 1 development as part of the BXC scheme.. Having had regard to the Council's request and paragraph 40 of the Guidance, the Secretary of State considers these modifications are necessary and appropriate and has decided to exercise his power to further modify CPO 1, as requested by the Council.

Human Rights

- 49 The Secretary of State has carefully considered whether the purposes for which the Orders were made sufficiently justify interfering with the human rights of those with an interest in the land affected by the Orders. In particular he has considered the provisions of Article 1 of the First Protocol to, and Article 8 of, the European Convention on Human Rights. With regard to Article 8, the Secretary of State considers that in balancing the rights of individuals who are affected by the Orders against the benefits to the community of proceeding with the Orders, that the making of the Orders and the interference with the individuals' rights are justified in the interest of the community in order to effect the scheme. With regard to Article 1 of the First Protocol, the Secretary of State considers that the interference with the individuals' property is justified by the advantages to the wider public interests by proceeding with the development which the Orders will facilitate. Overall, the Secretary of State considers that the Orders strike a fair balance between the public benefits of the scheme and the interference with the human rights of those with an interest in the land affected by the Orders.

Public Sector Equality Duty

- 50 The Secretary of State has considered the Equality Act 2010. Section 149 of the Equality Act 2010 introduced a public sector equality duty, that public bodies must, in the exercise of their functions, have due regard to the need to (a) eliminate discrimination, harassment, victimisation; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. Protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. In making this decision, the Secretary of State has had due regard to the requirements of the Public Sector Equality Duty and has sought representations from parties as to the potential equalities impacts arising.
- 51 In this regard and in coming to his decision, the Secretary of State considers that the confirmation of the Orders may have negative and positive impacts on protected groups and, in particular, persons with the protected characteristic of age and disability. The potential negative impacts on protected groups include the displacement of existing residents and the disruption caused to the existing community (IR 12.28) and the impacts of the scheme on remaining objectors who suffer from disability or ill-health (IR 12.95). The potential positive impacts on protected groups include the provision of affordable housing (IR 12.24), the improvements to community facilities (IR 12.29), and accessibility (IR 12.30). The Secretary of State has carefully considered mitigation measures in relation to the potential negative impacts on protected groups. The Secretary of State considers that measures have been put in place by the Council in the RRS to seek to mitigate some of the effects of displacement on existing residents (IR 12.25-12.27). However, the Secretary of State does not consider it is, in practice, possible to mitigate the potential negative impacts on existing residents by modifying the Orders to exclude the whole or part of the estate as he agrees with the Inspector that this would threaten connectivity and the creation of a coherent urban structure (IR 12.79) and would not enable the benefits of the comprehensive regeneration of the area to be achieved (IR 12.94).

Justification in the public interest and overall balance

- 52 The Orders should be confirmed only if there is a compelling case in the public interest to justify sufficiently the interference with the human rights of those with an interest in the land affected. The Secretary of State agrees with the Inspector and considers that the proposed purpose of the Orders will significantly contribute to improvement of the economic, social and environmental well-being of the area (IR 12.92). The Secretary of State agrees with the Inspector that the purposes for which the land is being acquired is supported by the adopted planning framework for the area (IR 12.91). The Secretary of State agrees with the Inspector that the potential viability of the scheme has been demonstrated and that there is a reasonable prospect that the scheme will proceed (IR 12.93). The Secretary of State agrees with the Inspector and considers that the proposed alternatives would not enable the benefits of the comprehensive regeneration of the area to take place (IR

12.94). The Secretary of State considers that reasonable steps have been taken by the Council to acquire the Order lands by agreement (DL 45). The Secretary of State agrees with the Inspector that the purposes for which the Order Lands would be acquired and the benefits of the scheme justify interfering with the human rights of those with an interest in the land affected (IR 12.95). The Secretary of State has also had due regard to the Public Sector Equality Duty in considering whether to confirm the Orders (DL 50-51) Overall, the Secretary of State agrees with the Inspector and concludes, in his judgment, that the public benefits of the scheme significantly outweigh the interference with private rights and consequently that there is a compelling case in the public interest for the confirmation of both Orders (IR 12.95).

- 53 The Secretary of State has therefore decided to confirm CPOs 1 and 2 with the modifications to CPO 1 recommended by the Inspector at IR 13.1 and with the further modifications to CPO 1 requested by the Council in their letters of 5 October 2017 and 29 November 2017.
- 54 I enclose the confirmed orders and the maps to which it refers. Your attention is drawn to section 15 of the Acquisition of Land Act 1981 as amended by section 34 of the Neighbourhood Planning Act 2017 about publication and service of confirmation notices now that the orders have been confirmed. Please inform us of the date on which notice of confirmation of the Orders is first published in the press.
- 55 Copies of this letter and the Inspector's report are being sent to remaining objectors. Copies of this letter are also being sent to other persons who made submission at the local inquiry.
- 56 This letter does not convey any other consent or approval in respect of the land to which the order relates.

Yours sincerely

Signed by authority of the Secretary of State for Communities and Local Government



Stephen Jewell
Team Leader Planning Casework Unit

Appendix H

Mr Dickson Email (06.06.24)

From: Portwain, Vicky
Sent: 06 June 2024 17:17
To: Simon Mole
Cc: [REDACTED]
Subject: Mr Dickson - [REDACTED]

Dear Simon

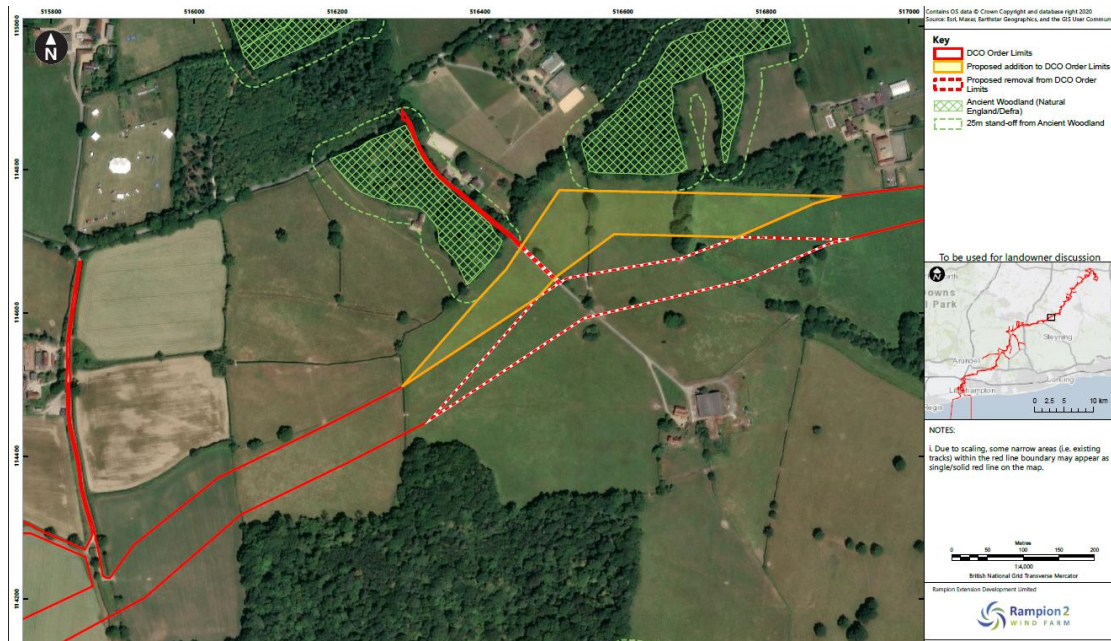
I am emailing further to our various conversations and the alternative proposals you have put to us for [REDACTED]. In particular you have asked us to consider “Alternative 3” in light of Mr Dickson having very recently felled the belt of trees in the north east field and for us to put forward our “best compromise”.

As discussed on our call last Friday (31st May), the Rampion 2 project team last week reviewed again the proposed “Alternative 3” put forward in the Written Representations in light of the reported felled trees. Rampion 2 cannot take account of the felling in the context of Environmental Assessment– as the assessment needs to be based on the point of time used within the application. Therefore, the felled trees will not alter how our consultants would approach the assessment.

The conclusions from the meeting remain against taking forward the proposal for the following reasons:

1. Trenchless crossing amenity impact on the property to the north which has not been assessed
2. Increased surface water flooding risk
3. Additional unknown services
4. Overlap with the ancient woodland buffer
5. Additional tree line crossing (as cannot be voided from the assessment).

At the same meeting we considered a northern cable alignment which would not impact on the ancient woodland buffer. This proposal is included below:



This cable route alignment has not been subject to full Environmental Impact assessment, however an initial BRAG assessment was carried out. Again the conclusions were that on balance the DCO route is preferable due to increased level of surface water risk, impacts from the trenchless crossing and unknown services.

Notwithstanding the above Rampion 2 is keen to find a pragmatic solution and is prepared to discuss if there would be potential for agreement by your client to the above cable alignment with no trenchless crossings on the land. The approach to securing consent would need to be aligned with the appropriate information and this can't be done with the information in the ES. Rampion 2 has no survey data for the northern part of the land as no access was permitted by Mr Dickson to survey outside of the DCO red line when surveys were carried out.

As a result of the above and as discussed with you, Rampion would require flexibility to determine the appropriate course of action to facilitate such a change in light of the lack of Environmental information and assessment. Notwithstanding this, Rampion 2 would be prepared to commit to reasonable endeavours to secure consent for the above cable alignment with no trenchless crossings if this would result in an agreed way forward.

I note in this regard that NPS EN-1 states that where an alternative is first put forward by a third party after an application has been made, the Secretary of State may place the onus on the person proposing the alternative to provide the evidence for its suitability as such and the Secretary of State should not necessarily expect the applicant to have assessed it. - para 4.3.29 EN-1.

I look forward to your client's consideration and response.

Vicky Portwain

External Consultant

Land Transaction Manager

[REDACTED]

mailto: [REDACTED]



RWE Renewables UK

Web: [REDACTED]

[REDACTED]

Registered Office:

RWE Renewables UK Limited: Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire SN5 6PB, Registered in England and Wales no. 03758404

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Appendix I

Mr Dickson Email: re-PDF of the proposed change plan (13.06.24)

Coombes, Sean

From: Portwain, Vicky
Sent: 13 June 2024 20:58
To: Simon Mole
Cc: Nigel Abbott
Subject: RE: PDF of the proposed change plan
Attachments: 42285-WOOD-EX-ON-PN-MD-0027 Rev3.0 CWF.pdf

Hi Simon

Please find a PDF of the plan we looked at today. As discussed on site, I understand that Mr Dickson has not agreed this plan and that you are sending over the proposed route he talked through at College Wood Farm today.

Also as discussed on site, we need an agreed route before we can instruct any further survey work to inform an environmental report. I look forward to progressing matters.

All the best

Vicky

From: Simon Mole <[REDACTED]>
Sent: Thursday, June 13, 2024 4:59 PM
To: Portwain, Vicky <[REDACTED]>
Cc: Nigel Abbott <[REDACTED]>
Subject: [EXT] PDF of the proposed change plan

[EXTERNAL EMAIL **]:** This email originated from outside of the organization - be CAUTIOUS, particularly with links and attachments.

Hi Vicky,

Thanks for today. Can you send over a PDF copy of the plan from today?

Kind Regards

Simon
SIMON MOLE
PARTNER

Montagu Evans LLP, 70 St Mary Axe, London, EC3A 8BE
m.[REDACTED]



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Appendix J

Mr Dickson Email (14.06.24)

Coombes, Sean

From: Simon Mole <[REDACTED]>
Sent: 14 June 2024 16:15
To: Portwain, Vicky
Cc: [REDACTED]
Subject: [EXT] RE: Mr Dickson - Colledge Wood Farm
Attachments: 42285-WOOD-EX-ON-PN-MD-0027 Rev3.0 CWF SM Mark Up.pdf

Subject to Contract

Hi Vicky,

Thanks for your time yesterday, Mr Dickson and I both welcome the time and effort in trying to reach an agreement on a revised cable corridor.

As discussed please see attached our revised corridor in black with annotations.

The key points:

- A construction width of 40m throughout
- An easement width of 20m throughout
- The woodland standoff remains but look to utilise, where possible, this space
- Mr Dickson is willing to remove the oak tree we saw yesterday to help with the constraints in this location
- We are willing to compromise on the farm drive crossing in terms of open cut but will want some controls around timing of the works and reinstatement so these can happen asap (say no more than 2 weeks)
- Keep the western gate open and available

Mr Dickson is keen to point out there is no fencing needed on the north side and no crossing points/gates which should represent a saving to your contractor.

We would be grateful if you could instruct your surveyors to mobilise and carry out the surveys next week (access will be available) with the view of getting the Change Request in as soon as possible.

Please let me know if you need any further information.

Kind Regards,

Simon

SIMON MOLE
PARTNER

Montagu Evans LLP, 70 St Mary Axe, London, EC3A 8BE
[REDACTED]



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From: [REDACTED]
Sent: Monday, June 10, 2024 10:48 AM
To: Simon Mole <[REDACTED]>
Cc: [REDACTED]
Subject: RE: Mr Dickson - Colledge Wood Farm

Dear Simon

I will come back to you on your email below, however I confirm that Nigel and I can make 3.30pm on Thursday (13th June) at Colledge Wood Farm.

Vicky

From: Simon Mole [REDACTED]
Sent: Friday, June 7, 2024 1:22 PM
To: Portwain, Vicky [REDACTED]
Cc: [REDACTED]
Subject: [EXT] RE: Mr Dickson - [REDACTED]

[EXTERNAL EMAIL **]:** This email originated from outside of the organization - be CAUTIOUS, particularly with links and attachments.

Hi Vicky,

Thanks for your email. I am not entirely clear what the proposal is based on the comments below and I have tried to summarise these in the bullet points below:

- 1) The fact that the trees have been removed does not make any difference from the DCO application perspective as the ecological assessment date was as per the date of the DCO submission (September 2023)
- 2) There are other factors which have not been assessed against the alternative corridor (see 1-5 in your list below) and a full EIA has not been carried out.
- 3) A BRAG rating on the alternative corridor has been carried out which also concludes the DCO corridor is preferable due to increased level of surface water, trenchless crossing and unknown services. I would question the adequacy of the BRAG rating as there is surface water on the DCO corridor (as is visible from the site inspections), Rampion are not offering any trenchless crossing and there are services in the DCO corridor (electricity cable). Can you please provide a copy of the BRAG assessment?

Your email suggests this 'alternative' corridor is a new thing hence why the various studies have not been carried out. That is of course not the case as the route below is based on one of the options previously presented by Guy Streeter.

Nevertheless, you are keen to see if there is a way of progressing the alternative corridor although there are no timescales attached to this and it is clear there are further surveys to be carried out.

In the first instance my client would welcome a chance to walk the alternative corridor with you and Nigel and we have discussed meeting next Thursday afternoon (3.30pm). The intention is to arrive at an agreed alternative plan which can be pursued. Can you confirm you are available?

In terms of ensuring the alternative corridor is suitably progressed within the examination period, having discussed with our client's solicitor the three options are:

- (i) A change request to the current DCO submission submitted by Rampion (your penultimate paragraph is unhelpful in the context of trying to resolve matters)
- (ii) A Non-Material Application to the DCO after its confirmation
- (iii) A TCPA application

Our preference is (i) and we would suggest Rampion conducts the various surveys and consultation process it needs within the remaining timescales of the examination period. If Rampion believe a TCPA is more achievable (this is not our preferred route as not least the LPA are likely to consider the cumulative impacts of both the DCO and TCPA applications) then we will want to see this being proactively pursued now, not after the examination period.

Look forward to hearing from you soon.

Kind Regards,

Simon

SIMON MOLE
PARTNER

Montagu Evans LLP, 70 St Mary Axe, London, EC3A 8BE
[REDACTED]



 THIMV DECADE VOU DDINT AD DACT IN FACE CONSIDERED THE ENVIRONMENT

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From: [REDACTED]
Sent: Thursday, June 6, 2024 5:17 PM
To: Simon Mole [REDACTED] >
Cc: [REDACTED]
Subject: Mr Dickson - Colllege Wood Farm

Dear Simon

I am emailing further to our various conversations and the alternative proposals you have put to us for [REDACTED]. In particular you have asked us to consider "Alternative 3" in light of Mr Dickson having very recently felled the belt of trees in the north east field and for us to put forward our "best compromise".

provide the evidence for its suitability as such and the Secretary of State should not necessarily expect the applicant to have assessed it. - para 4.3.29 EN-1.

I look forward to your client's consideration and response.

Vicky Portwain

External Consultant

Land Transaction Manager
[REDACTED]

mailto: [REDACTED]



RWE Renewables UK
[REDACTED]

Registered Office:

RWE Renewables UK Limited: Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire SN5 6PB, Registered in England and Wales no. 03758404

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Appendix K

Mr Dickson Email (19.06.24)

Coombes, Sean

From: Portwain, Vicky
Sent: 19 June 2024 23:50
To: Simon Mole
Cc: [REDACTED]
Subject: RE: Mr Dickson - Colllege Wood Farm

Dear Simon

Further to your new marked up plan sent through on Friday, please find Rampion 2's engineering and environmental comments below on your proposed revised DCO order limits at [REDACTED]. As previously communicated, Rampion 2 would need the confidence of an agreed cable route to survey before instructing surveyors so I am not clear on why Mr Dickson is of the understanding that surveyors are attending this week when the latest Rampion 2 plan put forward has not been agreed by him. In order to progress matters, I would be grateful if you would confirm that Mr Dickson is accepting of the key project requirements as follows:

- 1) DCO corridor of 60-70m (within which the 40m working construction corridor will be located – please see Examination library reference below for a description of the process)
- 2) Approximate easement width of 20m but wider if the project requires (e.g to go around obstacles subject to appropriate increase in payment).

I will then ask the engineers to consider if any further changes can be made taking into account your proposed cable routing and comments, which would not put the project delivery at risk.

Engineering Comments in response to the proposed amended cable route and associated annotations

A construction width of 40m throughout

- The reduction of the DCO order limits to a width of 40m presents a significant project risk as it removes the required flexibility required for GI surveys and detailed cable design or pre-construction/ construction phase potential constraints such as archaeology, UXO etc that could present a risk to the delivery of the project. Temporary construction corridor will be 40m for trenched cable installation as per the DCO Application. However, the location of the 40m construction corridor is not determined at this point and will be within the 60-70m DCO boundaries to retain flexibility to account for detailed design. This is required, for example, to construct an appropriate crossing of the 33kV buried services in agreement with the utility operator. Within the corridor boundary, the construction design will take landowner requirements and requests into account as far as possible. Please see Rampion 2's "Applicant's responses to Action Points arising from Compulsory Acquisition Hearing 1- Table 2-2 - 1 for a detailed account of the rationale behind this: [Applicant's response to Action Points arising from ISH2 & CAH1 \(planninginspectorate.gov.uk\)](#)

- An easement width of 20m throughout

It is anticipated that a 20m easement will be required for the cables. However per the key terms there are caveats with regard to, for example the avoidance of obstacles which Rampion 2 requires to be in the documentation.

- The woodland standoff remains but look to utilise, where possible, this space

The area of the woodland standoff is outside the proposed order limits in the marked up plan. The project is required to observe commitments C-216 in relation to this. The project has previously explored whether woodland buffers could be used for 'non-intrusive construction activities' (e.g. laying of ducts or soil storage), but it is understood that these works are not permitted in this area.

- We are willing to compromise on the farm drive crossing in terms of open cut but will want some controls around timing of the works and reinstatement so these can happen asap (say no more than 2 weeks)

In principle Rampion 2 can commit to a 2-week crossing of the farm drive (start of construction to functional access reinstatement). During the 2-week crossing, access for Mr Dickson would be retained either via road plating or via a diversion route as previously communicated. It must be noted that there are stages of the construction of the utility crossing that involve third parties (for example for inspection & supervision by the utility operator), and that the target 2-week crossing of the access track does not account for potential delays due to third parties. However, this is considered unlikely.

- Keep the western gate open and available
- With regards to the western gate, it would not be possible to reduce the DCO order limits to this extent at this stage, and the western gate needs to remain inside the DCO order limits for operational access.

Environmental Comments in response to the proposed amended cable route and associated annotations

- The proposed cable route forwarded is from an environmental perspective less preferable than the DCO route for surface water, biodiversity and landscape and visual reasons.

All the best
Vicky

From: Simon Mole [REDACTED]
Sent: Monday, June 17, 2024 1:41 PM
To: Portwain, Vicky <[REDACTED]>
Cc: [REDACTED]
Subject: [EXT] RE: Mr Dickson - Colledge Wood Farm

Thanks for your swift reply Vicky, please see mine in red.

Kind Regards,

Simon

SIMON MOLE
PARTNER

Montagu Evans LLP, 70 St Mary Axe, London, EC3A 8BE
[REDACTED]



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From: [REDACTED]
Sent: Monday, June 17, 2024 1:26 PM
To: Simon Mole [REDACTED]
Cc: [REDACTED]
Subject: RE: Mr Dickson - [REDACTED]

Dear Simon
Many thanks for your email. I have a few queries below in green:
I look forward to your response
Vicky

From: Simon Mole [REDACTED] >
Sent: Friday, June 14, 2024 4:15 PM
To: Portwain, Vicky <[REDACTED]>
Cc: [REDACTED]; Simon Mole <[REDACTED]>
Subject: [EXT] RE: [REDACTED]

Subject to Contract

Hi Vicky,

Thanks for your time yesterday, Mr Dickson and I both welcome the time and effort in trying to reach an agreement on a revised cable corridor.

As discussed please see attached our revised corridor in black with annotations. **Please can you confirm if this is your proposed revised DCO red line? Yes, accepting there might be a bit of final tweaking once the updated plan is produced.**

The key points:

- A construction width of 40m throughout **Are – you proposing that the revised DCO red line is 40m or that Mr Dickson is happy with a wider than 40m DCO red line but wants construction corridor width of 40m fixed? These widths are taken from the key terms. Our position is that the DCO red line should be limited to 40m in width and would hope with the additional surveys here that can be achieved.**
- An easement width of 20m throughout **Are you seeking for this to be a maximum? Yes**
- The woodland standoff remains but look to utilise, where possible, this space **As discussed on site Rampion 2 is not proposing to utilise this area.**
- Mr Dickson is willing to remove the oak tree we saw yesterday to help with the constraints in this location.
- We are willing to compromise on the farm drive crossing in terms of open cut but will want some controls around timing of the works and reinstatement so these can happen asap (say no more than 2 weeks). **Yes in principle this looks fine and we can agree some wording for key terms. Great, thank you**
- Keep the western gate open and available **This is in the centre of the construction corridor so we would need to discuss with the engineers how this would work. Are you saying Mr Dickson wants to be able to take access through the gate at all times? He doesn't want to have to cut a hole in the hedgerow to create a new field access so ideally this gate will be just outside of the DCO area. Obviously I am conscious that Mr Dickson will not want to 'cross' the working area either.**

Mr Dickson is keen to point out there is no fencing needed on the north side and no crossing points/gates which should represent a saving to your contractor.

We would be grateful if you could instruct your surveyors to mobilise and carry out the surveys next week (access will be available) with the view of getting the Change Request in as soon as possible. **Surveyors can only mobilise if there is an agreed cable route to proceed with surveying. We don't have an agreed route yet. I have asked the team to look at your latest proposal so we can come back to you asap with our thoughts. I have asked that surveyors are in place for attending site should we reach an agreement. Great, access can be made available as required.**

Please let me know if you need any further information. [I look forward to some clarification per my queries above.](#)

Kind Regards,

Simon

SIMON MOLE
PARTNER

Montagu Evans LLP, 70 St Mary Axe, London, EC3A 8BE
[REDACTED]



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From: [REDACTED]
Sent: Monday, June 10, 2024 10:48 AM
To: Simon Mole [REDACTED]
Cc: [REDACTED]
Subject: RE: [REDACTED]

Dear Simon
I will come back to you on your email below, however I confirm that Nigel and I can make 3.30pm on Thursday (13th June) at College Wood Farm.
Vicky

From: Simon Mole <[REDACTED]>
Sent: Friday, June 7, 2024 1:22 PM
To: Portwain, Vicky <[REDACTED]>
Cc: [REDACTED]
Subject: [EXT] RE: Mr Dickson - [REDACTED]

[EXTERNAL EMAIL **]:** This email originated from outside of the organization - be CAUTIOUS, particularly with links and attachments.

Hi Vicky,

Thanks for your email. I am not entirely clear what the proposal is based on the comments below and I have tried to summarise these in the bullet points below:

- 1) The fact that the trees have been removed does not make any difference from the DCO application perspective as the ecological assessment date was as per the date of the DCO submission (September 2023)
- 2) There are other factors which have not been assessed against the alternative corridor (see 1-5 in your list below) and a full EIA has not been carried out.
- 3) A BRAG rating on the alternative corridor has been carried out which also concludes the DCO corridor is preferable due to increased level of surface water, trenchless crossing and unknown services. I would question the adequacy of the BRAG rating as there is surface water on the DCO corridor (as is visible from the site inspections), Rampion are not offering any trenchless crossing and there are services in the DCO corridor (electricity cable). Can you please provide a copy of the BRAG assessment?

Your email suggests this 'alternative' corridor is a new thing hence why the various studies have not been carried out. That is of course not the case as the route below is based on one of the options previously presented by Guy Streeter.

Nevertheless, you are keen to see if there is a way of progressing the alternative corridor although there are no timescales attached to this and it is clear there are further surveys to be carried out.

In the first instance my client would welcome a chance to walk the alternative corridor with you and Nigel and we have discussed meeting next Thursday afternoon (3.30pm). The intention is to arrive at an agreed alternative plan which can be pursued. Can you confirm you are available?

In terms of ensuring the alternative corridor is suitably progressed within the examination period, having discussed with our client's solicitor the three options are:

- (i) A change request to the current DCO submission submitted by Rampion (your penultimate paragraph is unhelpful in the context of trying to resolve matters)
- (ii) A Non-Material Application to the DCO after its confirmation
- (iii) A TCPA application

Our preference is (i) and we would suggest Rampion conducts the various surveys and consultation process it needs within the remaining timescales of the examination period. If Rampion believe a TCPA is more achievable (this is not our preferred route as not least the LPA are likely to consider the cumulative impacts of both the DCO and TCPA applications) then we will want to see this being proactively pursued now, not after the examination period.

Look forward to hearing from you soon.

Kind Regards,

Simon

SIMON MOLE
PARTNER

Montagu Evans LLP, 70 St Mary Axe, London, EC3A 8BE



 THIRTY YEARS ON AND STILL IN THE FRONT LINE OF THE ENVIRONMENT

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From: [REDACTED]

Sent: Thursday, June 6, 2024 5:17 PM

To: Simon Mole <[REDACTED]>

Cc: [REDACTED]

Subject: Mr Dickson - College Wood Farm

Dear Simon

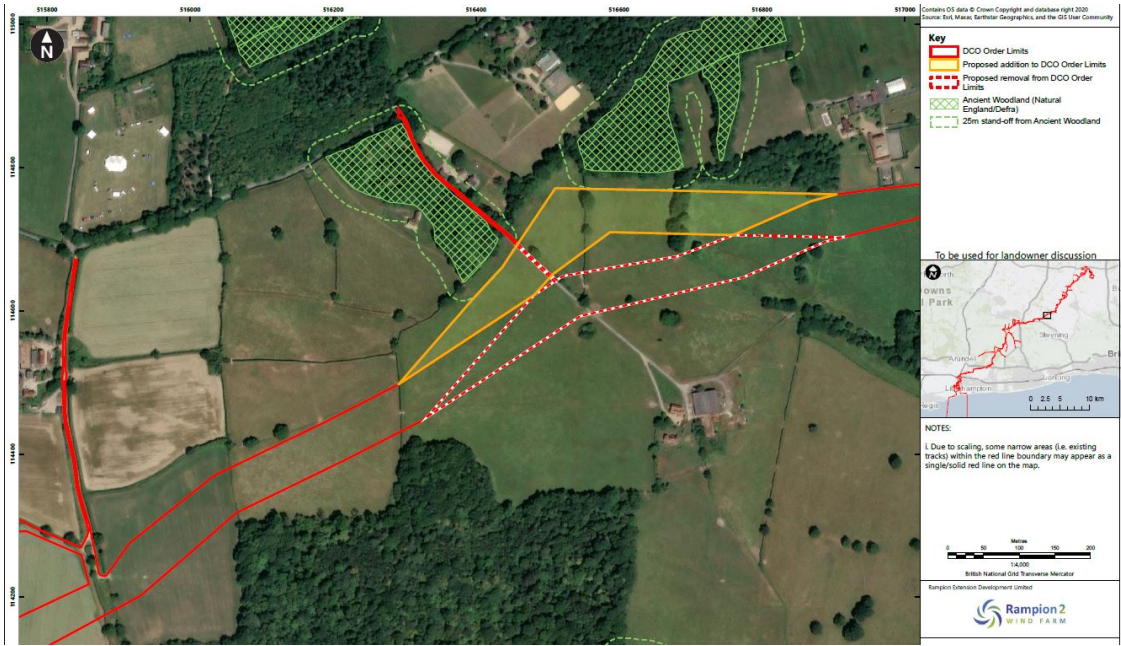
I am emailing further to our various conversations and the alternative proposals you have put to us for [REDACTED]. In particular you have asked us to consider "Alternative 3" in light of Mr Dickson having very recently felled the belt of trees in the north east field and for us to put forward our "best compromise".

As discussed on our call last Friday (31st May), the Rampion 2 project team last week reviewed again the proposed "Alternative 3" put forward in the Written Representations in light of the reported felled trees. Rampion 2 cannot take account of the felling in the context of Environmental Assessment– as the assessment needs to be based on the point of time used within the application. Therefore, the felled trees will not alter how our consultants would approach the assessment.

The conclusions from the meeting remain against taking forward the proposal for the following reasons:

1. Trenchless crossing amenity impact on the property to the north which has not been assessed
2. Increased surface water flooding risk
3. Additional unknown services
4. Overlap with the ancient woodland buffer
5. Additional tree line crossing (as cannot be voided from the assessment).

At the same meeting we considered a northern cable alignment which would not impact on the ancient woodland buffer. This proposal is included below:



This cable route alignment has not been subject to full Environmental Impact assessment, however an initial BRAG assessment was carried out. Again the conclusions were that on balance the DCO route is preferable due to increased level of surface water risk, impacts from the trenchless crossing and unknown services.

Notwithstanding the above Rampion 2 is keen to find a pragmatic solution and is prepared to discuss if there would be potential for agreement by your client to the above cable alignment with no trenchless crossings on the land. The approach to securing consent would need to be aligned with the appropriate information and this can't be done with the information in the ES. Rampion 2 has no survey data for the northern part of the land as no access was permitted by Mr Dickson to survey outside of the DCO red line when surveys were carried out.

As a result of the above and as discussed with you, Rampion would require flexibility to determine the appropriate course of action to facilitate such a change in light of the lack of Environmental information and assessment. Notwithstanding this, Rampion 2 would be prepared to commit to reasonable endeavours to secure consent for the above cable alignment with no trenchless crossings if this would result in an agreed way forward.

I note in this regard that NPS EN-1 states that where an alternative is first put forward by a third party after an application has been made, the Secretary of State may place the onus on the person proposing the alternative to provide the evidence for its suitability as such and the Secretary of State should not necessarily expect the applicant to have assessed it. - para 4.3.29 EN-1.

I look forward to your client's consideration and response.

Vicky Portwain

External Consultant

Land Transaction Manager



mailto: [Redacted]



RWE Renewables UK



Registered Office:

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RWE Renewables UK Swindon Limited: Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire SN5 6PB. Registered in England and Wales no. 02550622

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Appendix L

[REDACTED] farm cattle info request (28.05.24)

Coombes, Sean

From: Portwain, Vicky
Sent: 28 May 2024 18:35
To: Simon Mole
Cc: [REDACTED]
Subject: [REDACTED] cattle

Hi Simon

I am just trying to respond to your latest reps.

Please can you confirm which months of the year the cattle are at [REDACTED] (and if relevant Kent St too) so we can respond to your stockperson points? It's a bit tricky at the moment as we have very little information relating to how your client currently manages the cattle / times of year etc. Please can you give us some information?

Thanks

Vicky Portwain

External Consultant

Land Transaction Manager
[REDACTED]
[REDACTED]



RWE Renewables UK

[REDACTED]
[REDACTED]
[REDACTED]

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Appendix M

Mr Dickson College Wood Farm email

(30.05.24)

Coombes, Sean

From: Portwain, Vicky
Sent: 30 May 2024 14:48
To: Simon Mole; Nigel Abbott
Subject: RE: Mr T R Dickson - [REDACTED]

Dear Simon

Please could we have a call tomorrow where we can discuss the latest positions. Further to our last conversation I believe you were going to discuss Mr Dickson's latest position on the HDD of College Wood farm driveway. Please find below information that has been put together to inform the hearing regarding trenchless crossing timeframes likely to be required at this location. I also have set out the Applicant's commitment relating to retained access for Mr Dickson along College Wood Drive below, assuming 'open cut' trenching methods are used across the driveway for comparison. I would be grateful if you could confirm Mr Dickson's latest position with regard to the request for the HDD of College Wood farm in light of this information. This affects our response to your latest "Alternative 3" 'without trees' proposal put forward to us. As I say – we are happy to discuss this tomorrow if you have a slot.

Additional Trenchless Crossing over Mr Dickson's Land

Construction durations for trenchless crossings are 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 c. 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
- 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.

Open cut method – across College Wood Drive

The Applicant will provide uninterrupted access along the private access track throughout the duration of the construction period. 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, it is difficult to see the advantage of a trenchless crossing to Mr Dickson but welcome your further response on this.

All the best
Vicky

From: Simon Mole [REDACTED]
Sent: Wednesday, May 29, 2024 5:44 PM
To: Portwain, Vicky [REDACTED]; Nigel Abbott [REDACTED]
Subject: [EXT] Mr T R Dickson - [REDACTED]

[EXTERNAL EMAIL **]**: This email originated from outside of the organization - be CAUTIOUS, particularly with links and attachments.

Dear Vicky & Nigel,

Further to our discussion on Friday please see attached a photograph looking east of the felled trees, this provides a cleared corridor of circa 50m in width for the cable route.

Can you please advise when you will be able to come back to me on detailed proposals for us to consider at College Wood Farm?

Kind Regards,

Simon
SIMON MOLE
PARTNER

Montagu Evans LLP, 70 St Mary Axe, London, EC3A 8BE
[REDACTED]



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Appendix N

Mr Dickson [REDACTED] email (21.06.24)

Coombes, Sean

From: Portwain, Vicky
Sent: 21 June 2024 17:20
To: Simon Mole
Cc: Tom Etherton; Gore, Hayley; Moss, Michelle; [REDACTED]
Subject: Mr Dickson - College Wood Farm

Dear Simon

Thank you for your email received yesterday confirming broad acceptance of the cable route plan for assessment, which is a positive step. I forwarded your email to the Project team yesterday and I respond with regard our thoughts and next steps below.

I firstly set out information on the requirements and timeframes that would be associated with any change to the proposals we are seeking to progress, in order to outline the challenges that we both face in terms of implementing a change via a DCO change request.

1. In order to progress forward we need to close out both the updated plan for assessment (which I believe we have done) and any associated relevant constraints (and caveats) which would need to be set out in an agreed document such as an appendix to the key terms.
2. Further to the above we would need to confirm these details to our environmental consultants and engineering team and then survey and assess the proposal from a technical and environmental perspective (see my comments in relation to your survey timescale point below)
3. Only further to stage 2 can we consider whether it is a change that is both acceptable to Rampion 2 and consentable from an environmental/policy perspective and at that point we would need to take advice on the appropriateness of the change taking into account the information submitted to the Examination by Mr Dickson.
4. If the above assessment is positive, we would seek to secure a formal agreement with Mr Dickson prior to promoting the change
5. We would then need to submit a change notification request to PINS and obtain their view on what consultation is required. Further to Rampion 2 seeking advice from Eversheds on this last week, we understand that consultation is likely to be required with the LPA, Natural England and the property to the north as a minimum.
6. In anticipation of PINS requiring consultation we could start to undertake consultation between steps 4-5 as indicated in the latest Examination Guidance
7. Further to step 6, a change request would be submitted

Given the 28 day consultation period, we anticipate that it will be difficult to get to Stage 4 and consult on the change prior to the end of the Examination. On timing, as this is a change proposed late in the day and which we have not currently assessed, the NPS places the onus on Mr Dickson to demonstrate it's suitability.

Notwithstanding the above, Rampion 2 is prepared to make appropriate (legal) commitments to work with Mr Dickson to use reasonable endeavours to facilitate the agreed change post-DCO Examination using a mechanism which allows for the proper consideration of the change. I previously indicated this in my email of 6th June where I stated that *"Rampion would require flexibility to determine the appropriate course of action to facilitate such a change in light of the lack of Environmental information and assessment. Notwithstanding this, Rampion 2 would be prepared to commit to reasonable endeavours to secure consent for the above cable alignment with no trenchless crossings if this would result in an agreed way forward."*

I look forward to progressing those discussions. I set out some further responses to your points below in red but as noted above, I believe the next useful step would be for me to prepare a list of “key principles for proposing the cable route amendment” to be attached to the key terms.

Best regards
Vicky

From: Simon Mole [REDACTED]
Sent: Thursday, June 20, 2024 2:20 PM
To: Portwain, Vicky <[REDACTED]>
Cc: [REDACTED]; Tom Etherton <[REDACTED]>
Subject: [EXT] RE: Mr Dickson - College Wood Farm

Dear Vicky,

Thank you for your email. I have discussed with Mr Dickson and although there are elements of the alternative corridor which are not ideal, he is willing to take a pragmatic approach and agree the cable route corridor shown on the attached plan **subject to the following conditions:**

- 1) Where there are no identified constraints, the cable corridor option area is a maximum of 60m in width and where there are identified constraints, a maximum of 70m in width. **In principle this may be acceptable by our engineers subject to further technical assessment taking into account buried services information and detailed discussions on the definition of identified constraints in the context of different stages of the project design/ construction.**
- 2) The 2 week crossing of the farm drive as mentioned below. **As previously noted this would need to be subject to 3rd party asset owners not preventing this from happening.**
- 3) Site Surveys, where required are undertaken and completed no later than 28/6/24- a full proposal for you today or Monday **Our Environmental Consultants are seeking clarification on survey availability given this is peak season and we will revert with access requirements subject to agreement of the proposal changes (including caveats), steps and mechanism for the implementation of this potential change should it be deemed appropriate to progress (see below). I suggest that in this regard I set out a “key principles for agreement” list for attachment to the key terms and I will forward this to you early next week.**
- 4) Change request submitted to the Examining Authority no later than 05/07/24 in full accordance with the Guidance Note – Nationally Significant Infrastructure Projects – Advice Note 16: requests to change applications after they have been accepted for examination.

We have been advised by our environmental consultants that it would not just be environmental surveys and an environmental report that would be needed for a change request. A full list of documents would be needed to be compiled with inputs from the wider project team. They expect that this would at least include Onshore Works Plans, Land Plans, Statement of Reasons and Book of Reference and other specifics like updates of the Vegetation Retention Plan. They will need from Rampion 2 full final details of the change including but not limited to provision of the new Order Limits, additional relevant factors (and caveats) as set out in our email exchanges, a description of the change, agreement of mitigation e.g. replanting over cable corridor as we are proposing doing elsewhere. Our Environmental Consultant anticipates that this would take at least three weeks from instruction for the project team to bring together, including the environmental report. Our environmental consultants have flagged that the change request would go against applying the mitigation hierarchy in this location which is a significant focus of the ExA in their 2nd Written Questions. This would lead to additional impacts on ecology, LVIA and arboriculture.

Taking into account the above:

- a) There can be no guarantee that Rampion 2 would agree to a change to the DCO route until the environmental assessment work has been carried out,**
- b) the change request is unlikely to be deliverable within the DCO timeframes given environmental, technical assessment and consultation requirements**

- 5) To be clear the Change Request should seek to remove/amend Plots 25/1, 25/2 (and amend Plot 25/3) from the DCO application and replaced with the alternative route at the point the ExA accept the Change Request **Please**

note above – this cannot be committed to until the principles of the change have been agreed, the environmental work has been carried out and Rampion 2 understand the environmental impacts.

- 6) A copy of the Change Request submission is provided to myself and Mr Dickson as soon as possible. **(see above)**
- 7) Professional fees incurred in agreeing the alternative route are recoverable from Rampion. **This is not considered appropriate.**

Can you confirm no later than close of business tomorrow the above is accepted and will be actioned. **Please note above.**

In parallel can you please instruct Carter Jonas to prepare an updated plan and heads of terms for consideration. **Yes an updated draft plan can be prepared.**

Look forward to hearing from you soon.

Kind Regards,

Simon

SIMON MOLE
PARTNER

Montagu Evans LLP, 70 St Mary Axe, London, EC3A 8BE
[REDACTED]



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From: [REDACTED]

Sent: Wednesday, June 19, 2024 11:50 PM

To: Simon Mole [REDACTED] >

Cc: [REDACTED]

Subject: RE: Mr Dickson - College Wood Farm

Dear Simon

Further to your new marked up plan sent through on Friday, please find Rampion 2's engineering and environmental comments below on your proposed revised DCO order limits at College Wood Farm. As previously communicated, Rampion 2 would need the confidence of an agreed cable route to survey before instructing surveyors so I am not clear on why Mr Dickson is of the

understanding that surveyors are attending this week when the latest Rampion 2 plan put forward has not been agreed by him. In order to progress matters, I would be grateful if you would confirm that Mr Dickson is accepting of the key project requirements as follows:

- 1) DCO corridor of 60-70m (within which the 40m working construction corridor will be located – please see Examination library reference below for a description of the process
- 2) Approximate easement width of 20m but wider if the project requires (e.g to go around obstacles subject to appropriate increase in payment).

I will then ask the engineers to consider if any further changes can be made taking into account your proposed cable routeing and comments, which would not put the project delivery at risk.

Engineering Comments in response to the proposed amended cable route and associated annotations

A construction width of 40m throughout

- The reduction of the DCO order limits to a width of 40m presents a significant project risk as it removes the required flexibility required for GI surveys and detailed cable design or pre-construction/ construction phase potential constraints such as archaeology, UXO etc that could present a risk to the delivery of the project. Temporary construction corridor will be 40m for trenched cable installation as per the DCO Application. However, the location of the 40m construction corridor is not determined at this point and will be within the 60-70m DCO boundaries to retain flexibility to account for detailed design. This is required, for example, to construct an appropriate crossing of the 33kV buried services in agreement with the utility operator. Within the corridor boundary, the construction design will take landowner requirements and requests into account as far as possible. Please see Rampion 2's "Applicant's responses to Action Points arising from Compulsory Acquisition Hearing 1- Table 2-2 - 1 for a detailed account of the rationale behind this: [Applicant's response to Action Points arising from ISH2 & CAH1 \(planninginspectorate.gov.uk\)](#)

- An easement width of 20m throughout

It is anticipated that a 20m easement will be required for the cables. However per the key terms there are caveats with regard to, for example the avoidance of obstacles which Rampion 2 requires to be in the documentation.

- The woodland standoff remains but look to utilise, where possible, this space

The area of the woodland standoff is outside the proposed order limits in the marked up plan. The project is required to observe commitments C-216 in relation to this. The project has previously explored whether woodland buffers could be used for 'non-intrusive construction activities' (e.g. laying of ducts or soil storage), but it is understood that these works are not permitted in this area.

- We are willing to compromise on the farm drive crossing in terms of open cut but will want some controls around timing of the works and reinstatement so these can happen asap (say no more than 2 weeks)

In principle Rampion 2 can commit to a 2-week crossing of the farm drive (start of construction to functional access reinstatement). During the 2-week crossing, access for Mr Dickson would be retained either via road plating or via a diversion route as previously communicated. It must be noted that there are stages of the construction of the utility crossing that involve third parties (for example for inspection & supervision by the utility operator), and that the target 2-week crossing of the access track does not account for potential delays due to third parties. However, this is considered unlikely.

- Keep the western gate open and available
- With regards to the western gate, it would not be possible to reduce the DCO order limits to this extent at this stage, and the western gate needs to remain inside the DCO order limits for operational access.

Environmental Comments in response to the proposed amended cable route and associated annotations

- The proposed cable route forwarded is from an environmental perspective less preferable than the DCO route for surface water, biodiversity and landscape and visual reasons.

All the best
Vicky

From: Simon Mole [REDACTED] >
Sent: Monday, June 17, 2024 1:41 PM
To: Portwain, Vicky [REDACTED]
Subject: [EXT] RE: Mr Dickson - [REDACTED]

Thanks for your swift reply Vicky, please see mine in red.

Kind Regards,

Simon

SIMON MOLE
PARTNER

Montagu Evans LLP, 70 St Mary Axe, London, EC3A 8BE
[REDACTED]



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From: [REDACTED]
Sent: Monday, June 17, 2024 1:26 PM
To: Simon Mole <[REDACTED]>
Cc: [REDACTED]
Subject: RE: Mr Dickson - [REDACTED]

Dear Simon
Many thanks for your email. I have a few queries below in green:
I look forward to your response
Vicky

From: Simon Mole <[REDACTED]>
Sent: Friday, June 14, 2024 4:15 PM
To: Portwain, Vicky <[REDACTED]>
Cc: [REDACTED]
Subject: [EXT] RE: Mr Dickson - [REDACTED]

Subject to Contract

Hi Vicky,

Thanks for your time yesterday, Mr Dickson and I both welcome the time and effort in trying to reach an agreement on a revised cable corridor.

As discussed please see attached our revised corridor in black with annotations. **Please can you confirm if this is your proposed revised DCO red line? Yes, accepting there might be a bit of final tweaking once the updated plan is produced.**

The key points:

- A construction width of 40m throughout **Are – you proposing that the revised DCO red line is 40m or that Mr Dickson is happy with a wider than 40m DCO red line but wants construction corridor width of 40m fixed? These widths are taken from the key terms. Our position is that the DCO red line should be limited to 40m in width and would hope with the additional surveys here that can be achieved.**
- An easement width of 20m throughout **Are you seeking for this to be a maximum? Yes**
- The woodland standoff remains but look to utilise, where possible, this space **As discussed on site Rampion 2 is not proposing to utilise this area.**
- Mr Dickson is willing to remove the oak tree we saw yesterday to help with the constraints in this location.
- We are willing to compromise on the farm drive crossing in terms of open cut but will want some controls around timing of the works and reinstatement so these can happen asap (say no more than 2 weeks). **Yes in principle this looks fine and we can agree some wording for key terms. Great, thank you**
- Keep the western gate open and available **This is in the centre of the construction corridor so we would need to discuss with the engineers how this would work. Are you saying Mr Dickson wants to be able to take access through the gate at all times? He doesn't want to have to cut a hole in the hedgerow to create a new field access so ideally this gate will be just outside of the DCO area. Obviously I am conscious that Mr Dickson will not want to 'cross' the working area either.**

Mr Dickson is keen to point out there is no fencing needed on the north side and no crossing points/gates which should represent a saving to your contractor.

We would be grateful if you could instruct your surveyors to mobilise and carry out the surveys next week (access will be available) with the view of getting the Change Request in as soon as possible. **Surveyors can only mobilise if there is an agreed cable route to proceed with surveying. We don't have an agreed route yet. I have asked the team to look at your latest proposal so we can come back to you asap with our thoughts. I have asked that surveyors are in place for attending site should we reach an agreement. Great, access can be made available as required.**

Please let me know if you need any further information. **I look forward to some clarification per my queries above.**

Kind Regards,

Simon

SIMON MOLE
PARTNER

Montagu Evans LLP, 70 St Mary Axe, London, EC3A 8BE
[REDACTED]



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From: [Redacted] >
Sent: Monday, June 10, 2024 10:48 AM
To: Simon Mole <[Redacted]>
Cc: [Redacted]
Subject: RE: Mr Dickson - [Redacted]

Dear Simon

I will come back to you on your email below, however I confirm that Nigel and I can make 3.30pm on Thursday (13th June) at College Wood Farm.

Vicky

From: Simon Mole <[Redacted]>
Sent: Friday, June 7, 2024 1:22 PM
To: Portwain, Vicky <[Redacted]>
Cc: [Redacted]
Subject: [EXT] RE: Mr Dickson - [Redacted]

[EXTERNAL EMAIL **]:** This email originated from outside of the organization - be CAUTIOUS, particularly with links and attachments.

Hi Vicky,

Thanks for your email. I am not entirely clear what the proposal is based on the comments below and I have tried to summarise these in the bullet points below:

- 1) The fact that the trees have been removed does not make any difference from the DCO application perspective as the ecological assessment date was as per the date of the DCO submission (September 2023)
- 2) There are other factors which have not been assessed against the alternative corridor (see 1-5 in your list below) and a full EIA has not been carried out.
- 3) A BRAG rating on the alternative corridor has been carried out which also concludes the DCO corridor is preferable due to increased level of surface water, trenchless crossing and unknown services. I would question the adequacy of the BRAG rating as there is surface water on the DCO corridor (as is visible from the site inspections), Rampion are not offering any trenchless crossing and there are services in the DCO corridor (electricity cable). Can you please provide a copy of the BRAG assessment?

Your email suggests this 'alternative' corridor is a new thing hence why the various studies have not been carried out. That is of course not the case as the route below is based on one of the options previously presented by Guy Streeter.

Nevertheless, you are keen to see if there is a way of progressing the alternative corridor although there are no timescales attached to this and it is clear there are further surveys to be carried out.

In the first instance my client would welcome a chance to walk the alternative corridor with you and Nigel and we have discussed meeting next Thursday afternoon (3.30pm). The intention is to arrive at an agreed alternative plan which can be pursued. Can you confirm you are available?

In terms of ensuring the alternative corridor is suitably progressed within the examination period, having discussed with our client's solicitor the three options are:

- (i) A change request to the current DCO submission submitted by Rampion (your penultimate paragraph is unhelpful in the context of trying to resolve matters)
- (ii) A Non-Material Application to the DCO after its confirmation
- (iii) A TCPA application

Our preference is (i) and we would suggest Rampion conducts the various surveys and consultation process it needs within the remaining timescales of the examination period. If Rampion believe a TCPA is more achievable (this is not our preferred route as not least the LPA are likely to consider the cumulative impacts of both the DCO and TCPA applications) then we will want to see this being proactively pursued now, not after the examination period.

Look forward to hearing from you soon.

Kind Regards,

Simon

SIMON MOLE
PARTNER

Montagu Evans LLP, 70 St Mary Axe, London, EC3A 8BE
[REDACTED]



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From: [REDACTED] >

Sent: Thursday, June 6, 2024 5:17 PM

To: Simon Mole [REDACTED]

Cc: [REDACTED]
Subject: Mr Dickson - [REDACTED]

Dear Simon

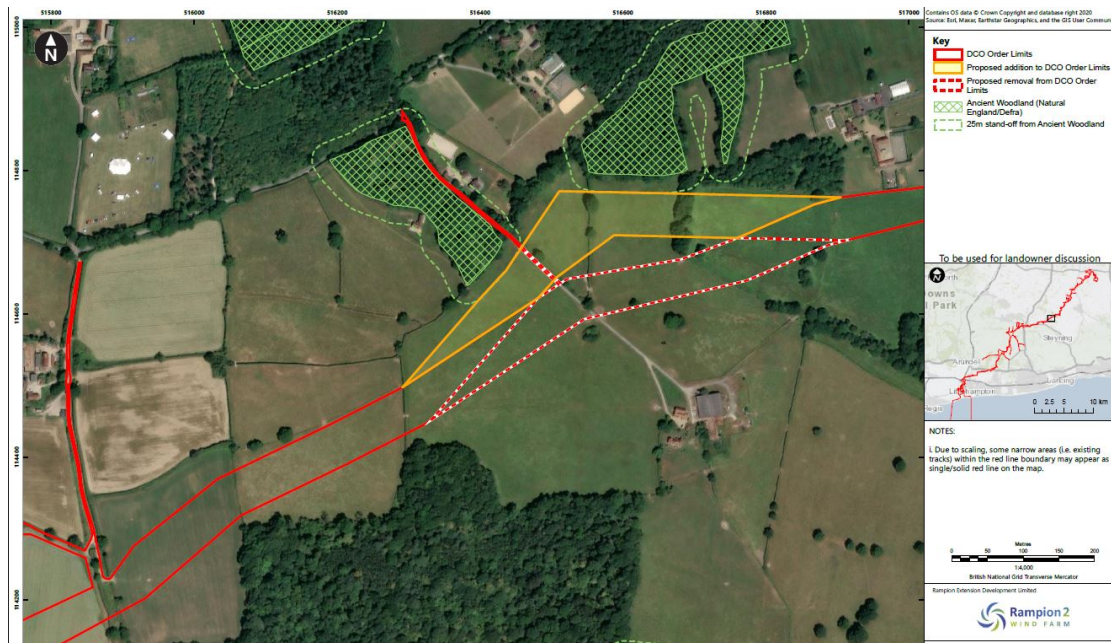
I am emailing further to our various conversations and the alternative proposals you have put to us for College Wood Farm. In particular you have asked us to consider “Alternative 3” in light of Mr Dickson having very recently felled the belt of trees in the north east field and for us to put forward our “best compromise”.

As discussed on our call last Friday (31st May), the Rampion 2 project team last week reviewed again the proposed “Alternative 3” put forward in the Written Representations in light of the reported felled trees. Rampion 2 cannot take account of the felling in the context of Environmental Assessment– as the assessment needs to be based on the point of time used within the application. Therefore, the felled trees will not alter how our consultants would approach the assessment.

The conclusions from the meeting remain against taking forward the proposal for the following reasons:

1. Trenchless crossing amenity impact on the property to the north which has not been assessed
2. Increased surface water flooding risk
3. Additional unknown services
4. Overlap with the ancient woodland buffer
5. Additional tree line crossing (as cannot be voided from the assessment).

At the same meeting we considered a northern cable alignment which would not impact on the ancient woodland buffer. This proposal is included below:



This cable route alignment has not been subject to full Environmental Impact assessment, however an initial BRAG assessment was carried out. Again the conclusions were that on balance the DCO route is preferable due to increased level of surface water risk, impacts from the trenchless crossing and unknown services.

Notwithstanding the above Rampion 2 is keen to find a pragmatic solution and is prepared to discuss if there would be potential for agreement by your client to the above cable alignment with no trenchless crossings on the land. The approach to securing consent would need to be aligned with the appropriate information and this can't be done with

the information in the ES. Rampion 2 has no survey data for the northern part of the land as no access was permitted by Mr Dickson to survey outside of the DCO red line when surveys were carried out.

As a result of the above and as discussed with you, Rampion would require flexibility to determine the appropriate course of action to facilitate such a change in light of the lack of Environmental information and assessment. Notwithstanding this, Rampion 2 would be prepared to commit to reasonable endeavours to secure consent for the above cable alignment with no trenchless crossings if this would result in an agreed way forward.

I note in this regard that NPS EN-1 states that where an alternative is first put forward by a third party after an application has been made, the Secretary of State may place the onus on the person proposing the alternative to provide the evidence for its suitability as such and the Secretary of State should not necessarily expect the applicant to have assessed it. - para 4.3.29 EN-1.

I look forward to your client's consideration and response.

Vicky Portwain

External Consultant

Land Transaction Manager
[REDACTED]
[REDACTED]



RWE Renewables UK
[REDACTED]
[REDACTED]

Registered Office:

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RWE Renewables UK Swindon Limited: Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire SN5 6PB. Registered in England and Wales no. 02550622

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[REDACTED]

Appendix O

Mr Dickson [REDACTED] (10.06.24)

Coombes, Sean

From: Portwain, Vicky
Sent: 10 June 2024 10:48
To: Simon Mole
Cc: [REDACTED]
Subject: RE: Mr Dickson - [REDACTED]

Dear Simon

I will come back to you on your email below, however I confirm that Nigel and I can make 3.30pm on Thursday (13th June) at College Wood Farm.

Vicky

From: Simon Mole [REDACTED] >
Sent: Friday, June 7, 2024 1:22 PM
To: Portwain, Vicky <[REDACTED]>
Cc: [REDACTED]
Subject: [EXT] RE: Mr Dickson - [REDACTED]

[EXTERNAL EMAIL **]:** This email originated from outside of the organization - be CAUTIOUS, particularly with links and attachments.

Hi Vicky,

Thanks for your email. I am not entirely clear what the proposal is based on the comments below and I have tried to summarise these in the bullet points below:

- 1) The fact that the trees have been removed does not make any difference from the DCO application perspective as the ecological assessment date was as per the date of the DCO submission (September 2023)
- 2) There are other factors which have not been assessed against the alternative corridor (see 1-5 in your list below) and a full EIA has not been carried out.
- 3) A BRAG rating on the alternative corridor has been carried out which also concludes the DCO corridor is preferable due to increased level of surface water, trenchless crossing and unknown services. I would question the adequacy of the BRAG rating as there is surface water on the DCO corridor (as is visible from the site inspections), Rampion are not offering any trenchless crossing and there are services in the DCO corridor (electricity cable). Can you please provide a copy of the BRAG assessment?

Your email suggests this 'alternative' corridor is a new thing hence why the various studies have not been carried out. That is of course not the case as the route below is based on one of the options previously presented by Guy Streeter.

Nevertheless, you are keen to see if there is a way of progressing the alternative corridor although there are no timescales attached to this and it is clear there are further surveys to be carried out.

In the first instance my client would welcome a chance to walk the alternative corridor with you and Nigel and we have discussed meeting next Thursday afternoon (3.30pm). The intention is to arrive at an agreed alternative plan which can be pursued. Can you confirm you are available?

In terms of ensuring the alternative corridor is suitably progressed within the examination period, having discussed with our client's solicitor the three options are:

- (i) A change request to the current DCO submission submitted by Rampion (your penultimate paragraph is unhelpful in the context of trying to resolve matters)
- (ii) A Non-Material Application to the DCO after its confirmation
- (iii) A TCPA application

Our preference is (i) and we would suggest Rampion conducts the various surveys and consultation process it needs within the remaining timescales of the examination period. If Rampion believe a TCPA is more achievable (this is not our preferred route as not least the LPA are likely to consider the cumulative impacts of both the DCO and TCPA applications) then we will want to see this being proactively pursued now, not after the examination period.

Look forward to hearing from you soon.

Kind Regards,

Simon

SIMON MOLE
PARTNER

Montagu Evans LLP, 70 St Mary Axe, London, EC3A 8BE
[REDACTED]



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From: [REDACTED]
Sent: Thursday, June 6, 2024 5:17 PM
To: Simon Mole <[REDACTED]>
Cc: [REDACTED]
Subject: Mr Dickson - [REDACTED]

Dear Simon

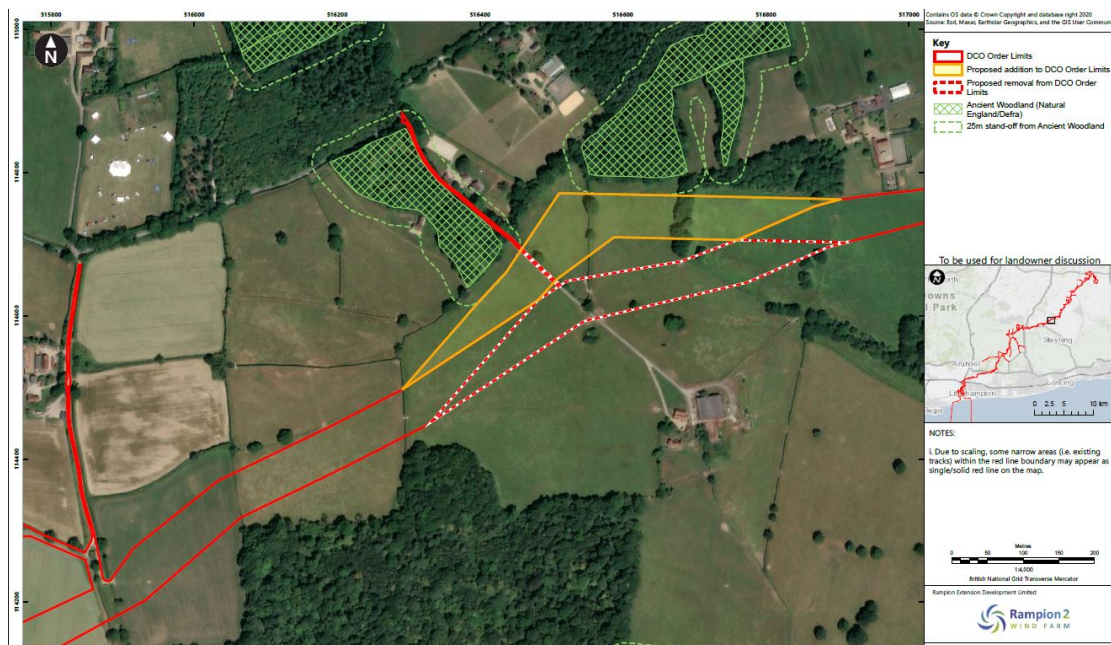
I am emailing further to our various conversations and the alternative proposals you have put to us for College Wood Farm. In particular you have asked us to consider "Alternative 3" in light of Mr Dickson having very recently felled the belt of trees in the north east field and for us to put forward our "best compromise".

As discussed on our call last Friday (31st May), the Rampion 2 project team last week reviewed again the proposed "Alternative 3" put forward in the Written Representations in light of the reported felled trees. Rampion 2 cannot take account of the felling in the context of Environmental Assessment– as the assessment needs to be based on the point of time used within the application. Therefore, the felled trees will not alter how our consultants would approach the assessment.

The conclusions from the meeting remain against taking forward the proposal for the following reasons:

1. Trenchless crossing amenity impact on the property to the north which has not been assessed
2. Increased surface water flooding risk
3. Additional unknown services
4. Overlap with the ancient woodland buffer
5. Additional tree line crossing (as cannot be voided from the assessment).

At the same meeting we considered a northern cable alignment which would not impact on the ancient woodland buffer. This proposal is included below:



This cable route alignment has not been subject to full Environmental Impact assessment, however an initial BRAG assessment was carried out. Again the conclusions were that on balance the DCO route is preferable due to increased level of surface water risk, impacts from the trenchless crossing and unknown services.

Notwithstanding the above Rampion 2 is keen to find a pragmatic solution and is prepared to discuss if there would be potential for agreement by your client to the above cable alignment with no trenchless crossings on the land. The approach to securing consent would need to be aligned with the appropriate information and this can't be done with the information in the ES. Rampion 2 has no survey data for the northern part of the land as no access was permitted by Mr Dickson to survey outside of the DCO red line when surveys were carried out.

As a result of the above and as discussed with you, Rampion would require flexibility to determine the appropriate course of action to facilitate such a change in light of the lack of Environmental information and assessment. Notwithstanding this, Rampion 2 would be prepared to commit to reasonable endeavours to secure consent for the above cable alignment with no trenchless crossings if this would result in an agreed way forward.

I note in this regard that NPS EN-1 states that where an alternative is first put forward by a third party after an application has been made, the Secretary of State may place the onus on the person proposing the alternative to provide the evidence for its suitability as such and the Secretary of State should not necessarily expect the applicant to have assessed it. - para 4.3.29 EN-1.

I look forward to your client's consideration and response.

Vicky Portwain

External Consultant

Land Transaction Manager

[REDACTED]

[REDACTED]



RWE Renewables UK

[REDACTED]

Registered Office:

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RWE Renewables UK Swindon Limited: Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire SN5 6PB. Registered in England and Wales no. 02550622

RWE Renewables Management UK Limited: Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire SN5 6PB. Registered in England and Wales no. 12087808

Appendix P

3278231-Vicarage Field Decision



Compulsory Purchase Order decision

Inquiry opened on 20 April 2022 and closed on 1 July 2022

Site visit made on 22 April 2022

by Katie McDonald MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th October 2022

Case Ref: APP/PCU/CPOP/Z5060/3278231

The London Borough of Barking and Dagenham Council (Vicarage Field and surrounding land) Compulsory Purchase Order 2021

- The Compulsory Purchase Order was made under Section 226(1)(a) of The Town and Country Planning Act 1990, Section 13 of The Local Government (Miscellaneous Provisions) Act 1976 and the Acquisition of Land Act 1981 by the London Borough of Barking and Dagenham Council (the Acquiring Authority).
- The purpose of the Order is:
 - a) to facilitate the carrying out of development, redevelopment or improvement on or in relation to the land comprising the demolition of existing buildings and the erection of new buildings and structures to provide a comprehensive mixed use development including a mix of uses including residential dwellings, commercial, retail, offices, a primary school, healthcare facilities, leisure uses, and other complementary and / or ancillary uses, new and improved car parking and associated servicing and infrastructure and new and improved public realm, which is likely to contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of the acquiring authority's area; and
 - b) executing works to facilitate the development and / or use of the land.
- The main grounds of objection were:
 - No compelling case for the scheme
 - Impediments to delivery of the scheme
 - Funding and viability of the scheme
 - Inadequate attempts to acquire by negotiations
 - Inadequate justification for inclusion of sites
 - Lack of alternative options demonstrated
 - Planning related objections
 - Loss of family home
 - Equalities
 - Human rights
 - Transport highways and servicing
 - Heritage and conservation
 - Loss of business premises and/or relocation
 - Business concerns due to construction work
 - Rights of light
 - Compensation
- When the inquiry opened, there were 67 remaining objectors.
- At the close of the inquiry, there was 65 remaining objectors.

DECISION

1. The Compulsory Purchase Order is not confirmed.

PROCEDURAL MATTERS AND STATUTORY FORMALITIES

2. On 7 October 2021 the Secretary of State confirmed that the decision had been delegated to an appointed Inspector.
3. The inquiry sat on 20-22 and 26-29 April, 4-6 and 10-12 May, 22 and 30 June, and 1 July 2022, and an accompanied site visit was carried out on 22 April 2022.
4. The Acquiring Authority (AA) is the London Borough of Barking and Dagenham Council. At the inquiry, it confirmed that it had complied with the statutory formalities. The Compulsory Purchase Order (CPO) was made by the AA on 14 June 2021.
5. The inquiry was adjourned on 12 May until 22 June 2022 because additional evidence was provided to the National Health Service Property Services (NHS PS) by the AA, after it had presented its evidence. In my view this evidence required a response and testing. Thus, the inquiry was adjourned to ensure adequate time for the preparation of a statement of case from the NHS PS and additional proofs of evidence from both the AA and NHS PS.
6. The objection from James Leigh Limited, relating to Unit 31 Vicarage Field (CPO Plot 1), was withdrawn shortly after the inquiry had closed. I have not considered this objection any further.

THE ORDER LAND AND SURROUNDINGS

7. The CPO comprises approximately 31,878 square metres (sqm) of land in Barking town centre. Land to be acquired by the AA takes in Vicarage Field Shopping Centre (VFSC) and car park, St Awdry's Walk¹, 24-38 (even) Station Parade, 13-23 (odd) Ripple Road and the former Vicarage Field Health Centre. Additional properties included in the CPO are 2-18 (even) Station Parade and 1-5 (odd) Ripple Road, for which new rights to execute works to facilitate the development are to be acquired (crane oversailing). Appendix 1 of this decision contains the Order Map.
8. The CPO lands are close to Barking railway station with the north eastern boundary adjoining the railway lines alongside St Awdry's Walk, an adopted public highway used as a pedestrian and cycle route. To the south east, surrounding the site are residential dwellings on St Awdry's Road and Sunningdale Avenue; and Vicarage Drive, with the Grade II listed Cosco House (former St Margaret's Vicarage) bordering the site. To the south west is Ripple Road and to the north west is Station Parade.
9. The AA is the freehold owner of VFSC and St Awdry's Walk, which accounts for around 86% of the Order Lands, excluding land where rights are to be acquired. The developer (Lagmar (Barking) Limited) holds the long leasehold interest to VFSC, the freehold of 21-23 Ripple Road and the leasehold interest of 21a Ripple Road. The inclusion of VFSC into the CPO is to ensure that any unknown 3rd party interests can be acquired and clean title to the land can be secured.

¹ For which a separate Stopping Up Order is required.

10. The shopping centre opened in the early 1990s, following a previous CPO to enable it to be built in the late 1980s. It is of a plain, outdated and uninteresting architectural style, covered and inwardly facing, with a retail focus, split over 3 levels. It has a limited street frontage and little natural fenestration, with a gloomy, dated interior and steep internal ramps. Overall, it detracts from the town centre and together with 36-38 Station Parade, does not create a welcoming or attractive entrance to the town centre from the railway station.
11. VFSC also contains a surface and rooftop car park, accessed from both Station Parade and Vicarage Drive. Service yards are accessed from entrances on Station Parade and Ripple Road, which result in heavy goods vehicles crossing pedestrian priority zones, creating conflict between vehicular traffic and pedestrians. Additionally, the car park access on Station Parade also results in vehicles travelling near the front of the railway station, causing conflict between a high flow of pedestrians and vehicles.
12. St Awdry's Walk is enclosed on both sides by tall boundary treatments. There is a lack of natural surveillance, and it is an unwelcoming and unattractive route, particularly at night. It contains steps from Station Parade down to the path, and whilst there is a gully for bicycle wheels, it is not accessible for anyone who requires ramped access, such as wheelchair or pram users.
13. The pedestrian experience in the area is unsatisfactory, because of the condition of St Awdry's Walk, the conflict associated with the servicing and car park access points, the layout of VFSC and its closure outside daytime hours.
14. 24-38 (even) Station Parade are 3 storey commercial properties, comprising a variety of uses and businesses, including a hotel, post centre, hair salon, nail salon, betting shop, travel agents, and grocers. 24-34 Station Parade are constructed in red brick, with vertical emphasis windows, overhanging eaves and pitched roofs with intervening parapet walls and chimneys, typical of mid 1900s construction. The properties have a tired and cluttered appearance from various poorly designed alterations to the shop fronts and unsympathetic rear extensions, and there is a proliferation of poorly placed advertisements. However, except for advertisements, the upper floors and roof retain a traditional character. 36-38 Station Parade is a similar design to the shopping centre, and has little merit or character in the street scene.
15. 13-23 Ripple Road are also 3 storey properties, containing commercial uses on the ground floor, such as retail, pharmacy, bank and hairdressers and a range of upper floor uses, including residential flats. They are constructed from red brick with upper floor bays, mansard roofs and dormers, typical of mid 1900's architecture. The adjoining row, from 25 Ripple Road upwards, reflects a similar row design.
16. The existing shops on Ripple Road and Station Parade contain many successful businesses, catering for an ethnically diverse mix of independent and small scale retailing and services.
17. Vicarage Field Health Centre is a single storey brick building dating from the 1930s with a car park to the side. It has been extended over time and contains a vast London Plane tree to the front, which is protected by a Tree Preservation Order. The health centre has been vacant for over 2 years.

18. The Ripple Road properties and Vicarage Field Health Centre are located within the Abbey and Barking Town Centre Conservation Area (CA). The Abbey and Barking Town Centre Conservation Area Appraisal² identified the buildings as positive contributors (with the extension to the health centre being neutral contributor).
19. The site has superb access to public transport, with the highest public transport accessibility level possible at 6B for most of the site, being located diagonally opposite Barking railway station. The station is well connected to central London, being on the underground services, overground and rail. The c2c line provides around a 16 minute journey time from Barking to Fenchurch Street station in central London.
20. Barking is undergoing significant change, with a high number of tall residential buildings being erected in the town centre and at the riverside.

CONSIDERATIONS

21. The Department for Levelling Up, Housing & Communities Guidance on Compulsory purchase process and The Crichel Down Rules (2019) (the CPO Guidance) refers to factors which may be considered in deciding whether to confirm a CPO, and I have used these as the structure for the remainder of this decision. I have also considered other matters raised by objectors, but the CPO process is not an opportunity to revisit the merits of the planning permission which has been granted for the Scheme, nor whether sufficient monetary valuations or compensation have been presented by the AA.

National Planning Policy Framework

22. The purpose of the planning system is to achieve sustainable development, meeting the 3 overarching objectives, economic, social and environmental. Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or 'brownfield' land.
23. Local planning authorities should take a proactive role in identifying and helping to bring forward land that may be suitable for meeting development needs, using the full range of powers available to them. This should include identifying opportunities to facilitate land assembly, supported where necessary by compulsory purchase powers, where this can help to bring more land forward for meeting development needs.
24. The Framework also seeks to significantly boost the supply of homes to support strong, vibrant and healthy communities by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations. It also sets out that significant weight should be placed on the need to support economic growth and productivity. This is to help build a strong, responsive and competitive economy.

² NHSPS-4(b) page 48

Regional planning policy

London Plan (March 2021)³ (LP)

25. Policy GG2 seeks to create successful sustainable mixed-use places by making the best use of land, enabling the development of brownfield land, particularly in Opportunity Areas. It also proactively explores the potential to intensify the use of land to support additional homes and workspaces, promoting higher density development, particularly in locations that are well-connected to jobs, services, infrastructure and amenities by public transport, walking and cycling. It also requires an understanding of what is valued about existing places, using this as a catalyst for growth, renewal and place-making, strengthening London's distinct and varied character.
26. London Riverside, of which Barking Town Centre is part, is identified as an Opportunity Area (Policy SD1) in the LP. Opportunity Areas are locations with significant development capacity to accommodate new housing, commercial development and infrastructure. London Riverside has an indicative capacity of 44,000 new homes and 29,000 new jobs over the next 20-25 years. The LP also sets ten-year targets for net housing completions, which for the Council is 19,440 new homes between 2019/20 and 2028/29. Barking town centre has also been identified as a Housing Zone with the potential to deliver around 2,300 new homes.
27. Policy SD6 seeks to promote the vitality and viability of London's town centres by encouraging strong, resilient, accessible and inclusive hubs with a diverse range of uses that meet the needs of Londoners, including main town centre uses, night-time economy, civic, community, social and residential uses; and identifying locations for mixed-use or housing-led intensification to optimise residential growth potential, securing a high-quality environment and complementing local character and heritage assets.
28. Barking town centre is identified in Table A1.1 as a Major town centre, with a night-time economy classification of more than local significance, medium commercial growth potential and high residential growth potential, and as a strategic area for regeneration.
29. Policy SD7 promotes a town centre first approach, supporting the development, intensification and enhancement of each centre. It also states that development plans should identify sites suitable for higher density mixed-use residential intensification capitalising on the availability of services within walking and cycling distance and current and future public transport provision.
30. Policy SD8 sets out that Major town centres should be the focus for the majority of higher order comparison goods retailing, whilst securing opportunities for higher density employment, leisure and residential development in a high quality environment. Policies E1 and E2 seek to ensure that improvements to the quality, flexibility and adaptability of office space should be supported by new office provision, refurbishment and mixed-use development.
31. Policies S1 and S2 seek to develop London's social infrastructure, ensuring the needs of London's diverse communities are met, and that boroughs work with Clinical Commissioning Groups and other NHS and community organisations

³ CDD.4

to identify and address local health and social care needs. Development proposals that support the provision of high-quality new and enhanced health and social care facilities to meet identified need and new models of care should be supported.

32. Policy D3 seeks to optimise site capacity through the design-led approach and sets out that all development must make the best use of land by following a design-led approach that optimises the capacity of sites, including site allocations. Policy D9 sets out requirements for tall buildings.
33. Policy T1 sets out that developments should facilitate the delivery of the Mayor's strategic target of 80% of all trips in London to be made by foot, cycle or public transport by 2041. It also requires development to make the most effective use of land, reflecting its connectivity and accessibility by existing and future public transport, walking and cycling routes.

London Riverside Opportunity Area Planning Framework (September 2015)⁴

34. This document focuses on regenerating and improving a large area of around 3,000 hectares across Barking and Dagenham and Havering. It refers to Barking Town Centre as a key development area, being suitable for high rise and high density, residential led mixed use developments. Strengthening Barking Town Centre's functions is paramount to the success of London Riverside as a whole and its regeneration is key to the level of growth in new homes and new jobs in London Riverside.
35. The document recognises that to achieve the regeneration of the town centre, it is necessary to rebalance its community, as there is a predominance of social rent tenants. Through new residential-led development, the Council and the Greater London Authority (GLA) are keen to introduce other forms of tenure to the town centre such as shared ownership and private rental sector.

Local planning policy

Core Strategy (July 2010)⁵

36. The Core Strategy (CS) outlines 13 strategic objectives, one of which promotes Barking town centre as a vibrant place which offers a mix of uses including "retail, leisure, culture, entertainment, housing community facilities and food and drink, and making sure residents throughout the Borough and beyond have access to them." Barking town centre is identified as a Key Regeneration Area, where Policy CM1 seeks to focus residential higher density development. Policy CM2 sets a housing target, which although superseded by the LP, expects delivery will be residential development in the key regeneration areas.
37. Policy CM5 identifies Barking town centre as the largest and only 'Major Centre' in the borough. Policy CE1 states that Barking town centre will be enhanced and its status as a Major Centre will be promoted and strengthened. Policy CE2 categorises Barking town centre as the first option for new office development.

⁴ CDD.5

⁵ CDD.2

38. Policy CP1 encourages the provision of a diverse range of cultural facilities including leisure and art, especially within town centres. This is to foster a vibrant cultural and tourism scene. It sets out the Council will encourage cultural facilities as part of mixed use development schemes including other uses such as retail, community facilities and housing. It also seeks to encourage additional tourist attractions in town centres, as well as appropriate tourist infrastructure such as hotel accommodation, public transport, improved walking and cycling routes, signposting, information centres and food and drink uses.
39. Policy CC2 seeks to maintain and improve community wellbeing by supporting proposals and activities that lead to the provision of sustainable and accessible community facilities.

Barking Town Centre Area Action Plan 2011 Development Plan Document (February 2011)⁶ (AAP)

40. This document highlights current issues in the town centre, including a lack of investment in shopping floorspace, poor provision of hotels, poor leisure and entertainment provision and a very limited restaurant offer and community facilities. Its vision is for Barking town centre to become a vibrant, environmentally sustainable, prosperous and well designed destination. In relation to the Barking Station Grouping, it states "there is the opportunity to create higher density development including a grouping of tall buildings to reflect the status of this area as the main arrival point into Barking Town Centre. The area is currently characterised by physical and visual clutter and low quality building stock".
41. The AAP allocates VFSC site as proposals site BTCSSA10 (Vicarage Field) and identifies the proposed use of additional shopping floor space and some 250 new homes. However, this allocation covered only VFSC and car parks, and not the wider land subject to the CPO, which is expected to deliver up to 855 homes. There are objections to the CPO related to the fact that the CPO Scheme includes land outside the allocation. I address this later when considering the CPO scheme.
42. Policy BTC3 encourages the provision of additional commercial offices. Policy BTC5 encourages the provision of commercial leisure uses within the town centre and regards their inclusion as part of a mixed use development around Barking Station as particularly appropriate, especially those that will stimulate and sustain a vibrant evening economy. Policy BTC6 seeks to develop and promote Barking as a recognised visitor destination.
43. Policy BTC15 commits the Council to working with other public bodies (such as NHS Barking and Dagenham) to enable the provision of a suitable range of health, educational and community facilities to meet demand. Policy BTC16 expects all developments to be high standard and contribute to a dramatic improvement in the physical environment of the area. BTC17 identifies land around Barking Station as 'sensitive' but potentially suitable for tall buildings.

⁶ CDD.1

Emerging Local Plan 2037

44. The emerging Local Plan (eLP)⁷ has been submitted for examination, however, it is at an early stage and is of only moderate weight. Nevertheless, Policy SPDG1 sets out that extensive and larger scale development will be focused primarily in Transformation Areas⁸, which includes Barking town centre and covers the CPO Lands.
45. Policy SPP1 (Barking and the River Roding Area) refers to an indicative capacity for 16,175 new homes in the plan period in this area, setting out that the Council is committed to the transformation of Barking town centre into a great place for its people. It also proposed to allocate the whole CPO site for a comprehensive mixed use redevelopment in the Proposed Site Allocations⁹.
46. Policy SPP1 then goes onto detail that at Vicarage Field, any development should transform the site as an important gateway opposite Barking railway station, enhancing the immediate environment and create new housing and employment opportunities. Development should also deliver comprehensive redevelopment of the Vicarage Field as a high-quality and high-density mixed-use development, which responds to the existing built form, contributes to the vitality of the centre, reinstating it as a natural part of the pedestrian network with new routes connecting with existing streets and movement patterns. It also states that proposals for piecemeal development which may undermine the delivery or viability of the comprehensive and co-ordinated redevelopment of these areas will not be supported. Other policies, such as DME3, DMD3, SP4, SP5 and DMT1 support the delivery of the CPO scheme.

Other background documents

***Barking Town Centre Regeneration Strategy 2020-2030 (October 2020)*¹⁰**

47. The town centre is identified as a key growth area and its success is stated to be vital for wider Borough regeneration plans. It recognises the challenges and opportunities for this town centre and focuses on ensuring adaptability and resilience to create a vibrant, successful, mixed-use town centre. The Strategy has a specific focus on the CPO site, recognising it as the highest profile development opportunity in the town centre, which should act as a catalyst for wider change and further investment.
48. It notes that the diversity of the commercial activities and offer is limited in the town centre, and states there will be a specific focus on the night time economy. It also recognises the importance of the site's location, with 2 of the 3 key strategic interventions to achieve this transformational change are to:
 - improve the poor first impression the station gives of Barking into a welcoming key gateway, and
 - intervene to take forward the first phase of Vicarage Field redevelopment as a key catalyst for high quality change.
49. Core Documents CDE2-6 also provide further background reading that supports redevelopment of the town centre.

⁷ CDD.3

⁸ Defined as locations that are likely to be subject to more extensive growth and development.

⁹ CDD.6

¹⁰ CDE.1

Conclusion

50. There is national policy support, a regional policy drive and strong local policy that promotes the regeneration of Barking town centre, in particular Vicarage Field, along with sufficient evidence to demonstrate that it requires transformative change and regeneration to level it up with other London boroughs.
51. The redevelopment of the site has long been, and continues to be, an important Council priority and is seen as the key catalyst for change. VFSC is allocated for redevelopment within the AAP, and the CPO lands are a proposed site allocation in the eLP.
52. The scheme underpinning the CPO complies with all relevant planning policies. Indeed, the Local Planning Authority (LPA) has granted outline planning permission for the CPO scheme in 2017, finding it compliant with the relevant policies at the time. This decision was unchallenged and is extant until April 2023.
53. Since its permission, the CPO scheme now has greater policy support, with the LP and Framework promoting densification, tall buildings, and mixed use developments in highly accessible locations. Furthermore, the AA has only delivered 66% of its housing target¹¹, and there is a critical housing need.

The need to redevelop and improve Barking town centre

Borough statistics

54. Barking town centre has trade and manufacturing roots, historically home to the largest fishing fleet in the world and more recently, a manufacturing base at Ford cars, which at its peak employed 45,000 people. However, Ford now have fewer than 4,500 employees and the Borough has suffered from the socio-economic impacts of deindustrialisation with many high quality, well paid jobs being lost. This has led to associated problems in terms of low life expectancy, low healthy life expectancy and healthy weight.¹²
55. The report of the Barking and Dagenham Independent Growth Commission¹³ recognised "The Borough is working class. There is a perception of crisis", and the "doing nothing is not an option". Nearly half of the Borough's employed population are in 'Standard Occupation Classification Groups 6-9' compared to around 20% for London as a whole, which is reflected in household incomes being substantially below the London average.¹⁴
56. The Borough suffers from several poor socio-economic indicators, and reflecting the level of need, it is in Priority Category 1 of the Government's Levelling Up Fund. It is ranked 13th lowest (worst) average rank in the whole country for the 10 indicators of poverty and has the worst rank in London.¹⁵
57. Data for the 12 months to September 2021 shows the borough has the highest rate of unemployment in the country (9.1%), and the unemployment rate has consistently been significantly higher than the London average. The

¹¹ AA/DM/1 7.3

¹² AA/DH/1, 3.4

¹³ CDE.5

¹⁴ AA/DH/1, 3.5

¹⁵ AA/DH/1, 3.6

impact of the Covid-19 pandemic has particularly hit the sectors in which many residents are employed.¹⁶

58. The Borough also has the highest proportion of 0-19 year olds in the country.¹⁷ This puts significant pressure on the Council to deliver new school places and provide better outcomes and employment opportunities for the next generation, particularly given that educational attainment continues to be an area of underperformance.
59. It also has one of the fastest growing populations and is one of the most diverse Boroughs, and between 2001 and 2011, the non-white population increased from 14.6% to 41.7%¹⁸. Job density figures are low (29th out of 33 in London) reflecting large industrial areas with limited jobs compared to more employment generating (per square foot) town centre employment uses.¹⁹
60. The Abbey Ward, where the CPO lands are, has even poorer socio-economic statistics than the rest of the Borough. It has the highest unemployment rate, highest percentage of Universal Credit claimants, highest crime rate and highest domestic abuse rate. Median household income in Abbey Ward is around £27,000 per annum – the Borough average is slightly higher, but the lowest of any London Borough.²⁰
61. The Borough also suffers from more crime and fear of crime relative to the rest of London. Safety, particularly perceptions of safety, is an issue for the town centre, with Abbey Ward having 171.5 crimes per 1,000 people.²¹

State of the town centre

62. The Retail and Town Centre Study Update Report²² sets out the strengths and weaknesses of the town centre. The strengths relate to existing market trade adding vibrancy, low vacancy rates, compact and good accessibility, high footfall and a reasonable number of convenience and comparison retail units. However, its weaknesses include:
 - Below average proportion of multiple operators. There is no high-profile department/variety store operator to anchor the centre. There are gaps in the clothing sector i.e. limited middle/mass market level shops and no upper market/luxury level shops.
 - Dissatisfaction with the choice and quality of non-food shops, with the offer being considered "too down market".
 - Failure to meet the needs of all customers, mainly more affluent households, such that there is a significant amount of comparison goods expenditure leaks to competing centres.
 - Gaps in provision, such as restaurants/bars.
 - Under-represented leisure and entertainment facilities for the evening economy.

¹⁶ AA/DH/1, 3.6

¹⁷ AA/DH/1, 3.6

¹⁸ CDE.5

¹⁹ AA/DH/1, 3.6

²⁰ AA/DH/1, 3.7

²¹ AA/DH/1, 3.8

²² CDE.4

- The interior of VFSC is relatively dated which detracts from the overall shopping environment.
- Relatively heavy traffic flows on Station Parade act as a barrier to pedestrian access and reduce safety for other road users.

63. It also notes that competing centres will inevitably improve in the future, and if Barking does not, it will not maintain its position in the hierarchy. The high level of comparison goods expenditure leakage will increase.

Conclusion

64. Change is happening in Barking. The town centre timeline²³ demonstrates this, and I saw evidence of this when in Barking. However, the weaknesses of the town centre and the stark statistics presented by the AA demonstrate that there is an obvious and desperate need to continue this comprehensive regeneration of the town centre.
65. Indeed, the AA set up the independent Growth Commission in 2015, which identified that Barking town centre should be the initial priority for growth and should be used as an exemplar for the AA's new approach to its urban areas. This includes the town centre becoming a more urban centre, with an active, interesting street life, a broad range of commercial uses, restaurants and places of employment. Be First, a Council-owned company was also set up to manage the delivery of the Borough's regeneration agenda.

The Scheme

Planning history

66. The first planning permission granted in 2011 included only VFSC. This was for a mixed use, partial redevelopment comprising 225 residential units and 1,333 sqm of retail floorspace. However, this permission lapsed and outline planning permission²⁴ for the CPO scheme was granted in April 2017, taking in additional land. The outline planning permission comprises demolition of all properties on the CPO lands to create a mixed use development including commercial, leisure, business and services floorspace, up to 855 dwellings, a 150 bed hotel, a 3-form entry primary school, healthcare facilities and public spaces.
67. A non-material amendment application²⁵ was granted in August 2019, which allowed an increase in the building parameter height for Block B4. A second non-material amendment application²⁶ was granted in October 2021, which updated the approved Development Specification to align with the 2020 amendments to the Use Classes Order. The minimum and maximum floorspace for each Use Class were also updated to enable increased flexibility in the type of uses that can be delivered in the scheme. The description of development was also amended.
68. Reserved matters for Block B4 were granted permission²⁷ in December 2019. This scheme incorporates 24-38 Station Parade and proposes an 8-storey

²³ CDE.1, page 33

²⁴ CDC.1

²⁵ CDC.6

²⁶ CDC.7

²⁷ CDC.9

building to provide 26 dwellings, 666 sqm of commercial spaces and 1,000 sqm of leisure space.

69. The planning obligation²⁸ attached to the outline planning permission requires the payment of financial obligations towards tree compensation (from the loss of the London Plane tree at Vicarage Field Health Centre), car club, carbon offsetting and highways re-instatement. It also requires 10% affordable housing (with a review clause for potential increases), marketing strategy for the cinema and music venue (using reasonable endeavours for 24 months to achieve occupation after practical completion), provision of health centre and affordable workspace, amongst other things.

Iterations of the scheme

70. There have been various iterations prior to the CPO scheme. Initially, the scheme included only VFSC reflecting the 2011 permission, and this was the first iteration presented to the LPA during pre-application discussions.
71. However, during these discussions, it was suggested by the LPA that the area for redevelopment should be expanded to include several properties along Station Parade, Ripple Road and Vicarage Drive. Within the feedback²⁹, the LPA advised that “the proposed development must incorporate all properties fronting Station Parade which sit between the railway and the existing service yard. Otherwise, this is an opportunity lost and there would be a very odd juxtaposition of your development and these properties. It is unthinkable that you would invest so much in an exemplar scheme and leave these properties in-situ as they will simply detract from the impact of your development and work against providing a fitting entrance from Station Parade. We would also support the inclusion of the Health Centre to the rear of Vicarage Field.”
72. Thus, all the buildings along Station Parade and Ripple Road that surround the shopping centre were considered, including the buildings directly opposite the railway station on Station Parade.
73. The buildings on the corner of Ripple Road and Station Parade and 10 Station Parade were discounted as these are locally listed and positive contributors to the CA. Focal House was also discounted, which although of very low quality, the site capacity within the wider scheme plan did not increase through the inclusion of this site. There was also a requirement to maintain servicing access to the rear of the retained properties and this limited the future arrangement. The buildings directly opposite the station were also not included because their location over the railway lines would have limited the height and capacity of redevelopment due to existing structural constraints.
74. Thus, the final iteration subject to the CPO scheme included 24-38 Station Parade, 13-23 Ripple Road, St Awdry’s Walk and Vicarage Field Health Centre.

Final scheme

75. The final scheme is an ambitious and large scale redevelopment, to be delivered by the AA’s development partner, PineBridge Benson Elliott (PBBE), the owner of Lagmar (Barking) Limited, VFSC’s leaseholder. The site’s vision³⁰

²⁸ CDC.2

²⁹ CDG.6

³⁰ AA/DW/1 - 3.6

is to deliver a scheme of exemplar quality, supporting the Council's bold vision for growing prosperity and employment, stimulating housing delivery, commercial vitality, place making, arts and culture.

76. The Design and Access Statement³¹ illustrates 5 clustered residential towers of varying heights, the tallest being 36 storeys. These would provide apartments and a hotel. At ground and first floor, a range of commercial Class E uses are proposed. Commercial frontages are maintained on Station Parade and Ripple Road, and within the centre of the development. Pedestrian routes are proposed through the site to create permeability, running from Station Parade to Vicarage Drive, to be known as Station Walk. A pedestrian route from Ripple Road to Station Walk is also proposed. Twenty-four hour accessible public open space through the site would be available and a public square would be created in the centre.
77. The leisure uses include a 6-8 screen cinema and a 300 person capacity music venue. New affordable workspace is also proposed. Community uses are proposed along Vicarage Drive with a health centre, cycle hub and 3-form entry primary school. The second floor is illustrated to contain a 'field level' podium of communal open space, landscaping and cycle parking for residents.
78. The site has been split into blocks to facilitate phasing, and aids with identification. Block B4 would be built out first, and PBBE propose to start in early 2023. Phase 2 is Block A, Phase 3 is Block B1/3 and Phase 4 is Block C. The primary school would be delivered separately by the Council.
79. The access would be reconfigured so that most servicing and vehicle access will be taken from Vicarage Drive, which would also be realigned and widened, leading to 2 separate parallel access points to basements, one for servicing and deliveries, the other for visitor and residential car parking. Some servicing would continue to take place from Station Parade, but this would be primarily to serve the existing remaining units to the west on the corner of Station Parade and Ripple Road.
80. The CPO Scheme would also remove the vehicular access ramp to the existing shopping centre from Station Parade. This would result in fewer cars entering the pedestrianised area, and consequently greater pedestrian connectivity between the station and the site, a fundamental principle of the scheme. Additionally, other benefits derived from including this land are an increase in size of the 'field' podium for the new residents, modern commercial floor space, leisure facilities and new homes.
81. The scheme has evolved over time, and from late last year, Block 4 is now set to contain a Food Hub having been identified as the preferred location, taking up around 45% of the footprint. Food Hubs³² are an emerging commercial use, that includes a mix of food-type schemes. These can include retail sales of fresh produce, food and beverage hospitality, pop-up and seasonal retail and educational events, shared development kitchens and workspaces, dark kitchens for delivery only businesses, and start-up incubator space for new local enterprises. The Food Hub would be the public face of the markets of the London wholesale markets (Billingsgate, Smithfield and New Spitalfields), who are moving to Dagenham Docks.

³¹ CDC.4

³² AA/PC/2 - Appendix 9

Justification for the acquisition

82. The inclusion of 24-38 Station Parade is essential because they would provide a significant contribution to the transformative 'gateway' experience when leaving the railway station, that would enhance the immediate environment. This relates not only to the height of the buildings, but also the expanse and width of the frontage. The existing VFSC frontage is narrow and including 24-38 Station Parade would enable a wider, prominent and welcoming entrance to the development, shouldered by tall and high quality commercial frontages.
83. The inclusion of Vicarage Field Health Centre is critical to forming the main access to the site, for both servicing and users. It would remove vehicles from Station Parade and service vehicles from both roads. It would also enable the widening of Vicarage Road, which is necessary to achieve a wider footway for pedestrians accessing the primary school. It is the only location for the access point. It is also a site of very low density and currently an inefficient use of land in this town centre location. The largest building footprint (Block C) in the Scheme would also be partially located on the site, which would contain the cinema and music venue, and the layout of the towers could be optimised.
84. The demolition of 21-23 Ripple Road would be critical to providing a wider access point for larger vehicles by straightening Vicarage Drive. The relocation of the access also removes much of the servicing traffic, prioritising pedestrians.
85. The existing residential properties at 13-23 Ripple Road would be a constraint on the layout and scale of proposals adjacent to the boundary. The orientation and proximity of the existing windows to the boundary of Vicarage Field Health Centre and VFSC would create issues around privacy and overlooking, as well as limitations to the potential height and massing of new neighbouring development. The inclusion would enable taller development on the neighbouring sites to the rear. Furthermore, it would also enable the entrance to the site to be moved centrally opposite the pedestrian desire lines from the Abbey grounds and riverside to the railway station.
86. The AA also consider that the quality of the properties on Ripple Road do little to add to the character of the town centre and are of a low contribution to the CA. I disagree and find them to be of positive benefit, but I understand the proposal would create a strong and striking edge building to Ripple Road in lieu of these properties. The inclusion also enables a larger floor plate to accommodate the cinema, taller blocks within the site and is set to be the location for the health centre.

Heritage and conservation

87. The loss of buildings within the CA is unfortunate and harmful, and this is recognised by the AA. Historic England objected to the outline planning application and assigned a significant level of harm to the loss of buildings which contribute positively to the character of the CA. They also considered the scale of the replacement buildings along Ripple Road to be at odds with the prevailing 3-4 storey building heights in this part of the CA. The loss of the terrace along 13-23 Ripple Road and the health centre on Vicarage Drive and the overall scale of the proposed development, particularly in views along East Street and Ripple Road, would neither preserve or enhance the character

of Abbey and Barking Town Centre and would cause a great level of harm to its significance which they considered has not been justified³³.

88. However, in its assessment of the planning application, the LPA concluded that the proposal would result in less than substantial harm. They detailed that the public benefits of the scheme were substantial, outweighing the harm to the CA.
89. Some of these benefits have changed as the scheme has evolved, but despite objections on these grounds, this CPO decision is not a re-run of the assessment of the planning application, and any changes to the uses still falls within the remit of the planning permission. Further heritage assessments would also be necessary for any reserved matters applications. That said, there is heritage harm, and this would be an adverse effect of the CPO scheme.

Benefits of the scheme

Social wellbeing

90. Overall, the CPO Scheme would deliver much needed regeneration of the town centre, providing an attractive development that would widen Barking's catchment area to create a more balanced and diverse community. The CPO scheme would provide a range of different uses including up to 855 new homes, in a mix of types and sizes, with a minimum 10% being affordable. Given the critical shortage of housing in the borough, the provision of this number of homes would, without doubt, contribute to social wellbeing.
91. The primary school would have a noticeably positive impact upon social wellbeing by providing modern and fit for purpose educational facilities for around 630 children, in a borough that has the highest proportion of 0-19 year olds in the whole country.
92. The health and wellbeing facility, now likely to take up around half of Block C would be much larger than originally anticipated (around 2.5 times what is required in the planning obligation), although I note no agreement is in place. Nevertheless, there is an obligation to provide a health facility, and this would have a positive impact upon social wellbeing, accommodating the healthcare and wellbeing needs of the borough's residents, of which modelling by North East London Clinical Commissioning Group (CCG) suggests there to be significant need for new community services³⁴. The health care, school and workspace use along Vicarage Drive and Ripple Road would create a valuable community cluster.
93. The mix of business floorspace, retail floorspace, leisure and cultural uses would contribute positively to the social wellbeing of the area. There would also be a significant increase in the range and amount of uses currently available, diversifying the town centre offer for existing and new residents.
94. The public square would be multipurpose open space in the centre of the site, along with a sequence of public spaces throughout and enhanced public toilet facilities. This would be of benefit to the social wellbeing of residents, create permeability to provide for community interaction and high quality facilities.

³³ CDC.3 page 31

³⁴ AA/PC/1 – 5.51

95. The new pedestrian streets would have 24 hour access, compared to the restricted daytime access at the shopping centre. The pedestrian streets would also replace St Awdry's Walk. This would be a significant positive benefit given the unsafe and partially inaccessible nature of the right of way. The pedestrian walkways would also provide a direct route from the Abbey grounds through to the railway station. This would considerably improve connectivity and legibility through the whole town centre.
96. A significant number of vehicles would be removed from both Station Parade and Ripple Road, and there would be an improved public realm on Vicarage Drive, with wider footways and pedestrianised sections. This would be a benefit to pedestrians in the town centre and those accessing the school.
97. The CPO scheme includes a minimum of 1,000 sqm of affordable workspace. This workspace would support local start-up businesses providing accessible workspace and access to jobs, promoting social wellbeing. Additionally, the Use Class E proposals would include a variety of retail, cafes or restaurants, in flexible configurations, such that they could attract independent retailers, specialist traders or multiple national brands. If it was successful in attracting independent or specialist traders, such as those in Station Parade and Ripple Road now, this would add vitality and interest to the scheme.
98. The Food Hub is likely to be located within Block B, providing access to a variety of food type schemes and businesses. These are likely to be independent, small scale and local operators, and brings a raft of community and social benefits, based upon the research document – *"crucially, while these venues will be centred on food, they will also have the flexibility to respond to local demand for other uses, for example: arts, cultural, sporting or educational"*³⁵.
99. The cinema, music venue, bars and restaurants would provide leisure and evening uses, which would promote all day use. This would boost the town centre offer considerably, particularly in the evening. It could improve the image of the town centre, adding vibrancy and making it a destination.

Environmental wellbeing

100. The superb public transport accessibility, and the significant increase in homes and the provision of new jobs within the commercial element would enable more people to live, work, shop and socialise in the town centre, reducing the need to travel, aligning with the AA's aspiration of a '15 minute city' concept³⁶.
101. The scheme also uses previously developed land in a denser, more efficient way. There would be a reduction in the number of car parking spaces compared to the existing arrangement, and this would reduce vehicular trips, on street congestion and improve air quality.
102. The access arrangements would reduce the number of vehicles on Station Parade and within the pedestrianised area of Ripple Road. This would have a positive impact on the environmental wellbeing of the area given the high footfall, and provide significant improvements to the public realm, actively encouraging cycling and walking.

³⁵ AA/PC/2 - Appendix 9

³⁶ CDE.1

103. The scheme is well-designed, and this would add value to the overall environmental wellbeing of the town centre, removing the outdated shopping centre. It would be constructed efficiently, to achieve a minimum of 35% carbon emission savings. Furthermore, there is an intention to connect it to the Barking Town Centre District Heating Network, which would provide low carbon sources of heat.
104. The second floor 'field level' and extensive landscaping would provide gardens, new habitats, water attenuation, evapotranspiration cooling of the microclimate and a natural means of air filtration. It would also provide growing spaces, planting and green roofs and a high quality communal amenity space. However, this is only accessible to the residents and would provide only environmental benefits.

Economic wellbeing

105. The daytime and evening commercial uses, along with the affordable workspace, would provide a range of employment opportunities and boost the evening economy. This would have a positive impact on economic wellbeing. The increase in commercial uses is also likely to reduce the spending leak to other areas and could attract spending from outside the borough.
106. It is anticipated that the CPO scheme would deliver over 1,339 full time employees (FTE) upon completion, equivalent to an additional 358 FTE. This is expected to deliver around £133 million in net economic benefits and estimates that the development could result in about £45 million net economic benefits associated with the delivery of private and affordable housing and £4 million in amenity benefits³⁷.
107. The CPO scheme would contribute towards reducing the level of deprivation in the borough through the provision of new jobs during and post construction. This is envisaged to be around 260 full time equivalent posts over a construction period ranging from 2023-2029³⁸, seeking to maximise local workers through the planning obligation.
108. Furthermore, the increased amount of people living in the town centre is highly likely to lead to a greater spending power. There is likely to be an increased demand for local shopping and consumer services facilities which would boost the local economy and have a positive impact on economic wellbeing of the wider area, rebalancing the existing population.
109. Lastly, the proposal is likely to act as a catalyst for further economic investment in the Borough, because of the regenerative effect, unlocking other regeneration projects and creating further additional jobs and training opportunities.

Criticisms of the scheme

110. Whilst the whole CPO lands are not allocated, planning policies support the delivery of the CPO scheme. The AAP does not become breached or conflicted if a scheme is proposed outside the allocation, and there are no policies that prohibit development outside the allocation. The wider site boundary would meet the aspirations of the AAP, which is to encourage high quality

³⁷ AA/DM/1 - 7.11

³⁸ AA/PC/1 - 5.6

redevelopment of new homes and modern commercial units. In fact, it goes beyond that, by including other social uses that would promote activity within the town centre, such as the cinema, restaurants and health centre.

111. Additionally, the land outside the shopping centre is also allocated as an Opportunity Area, Key Regeneration Area and Housing Zone. Planning policies at all levels support redevelopment and densification within highly accessible areas for well-designed new homes and commercial development. Therefore, the lack of an allocation covering the whole CPO lands does not result in the scheme being contrary to policy.
112. Objectors have also made various criticisms of the overall scheme and the reserved matters approval on Station Parade. The assessment of the planning applications is a matter for the LPA. The reserved matters approval has been granted and will be subject to other controls, such as fire and building regulations. If amendments are necessary to the internal layout, this would be considered by the LPA. Assertions that it is an illogical design, has servicing issues, or not suited to modern methods of construction, are not matters that are material to my decision on the CPO.
113. Objections are also raised that because the scheme relies on an increase in land values, the people of Barking will not be able to afford the dwellings within the scheme, given the scale of deprivation, average wages and unemployment rates. This would be counter to the Council's tag line of "no one left behind"³⁹ within the Economic Prospectus for Barking and Dagenham.
114. However, the document sets out how Be First/the Council will unlock inclusive growth to ensure residents, especially the young, fully benefit from growth by having the skills required to access higher paid employment that will be available in the Borough. The AA also detailed that there would be a marketing strategy for the site, and the Council itself is delivering a high amount of affordable housing. Additionally, the dwellings would be more affordable than most of London in any event⁴⁰ and the transport infrastructure is already in place.
115. Therefore, whilst there is a risk the scheme could become a commuter dormitory, this would be a risk with any scheme that seeks to provide residential dwellings in an area requiring regeneration with superb public transport access to central London. The key difference here is that the AA is invested in ensuring young residents benefit from growth to enable access to higher paid jobs.

Conclusion

116. The CPO scheme, as illustrated and envisaged, would create a comprehensive, transformative change to the town centre. It would provide a significantly improved entrance to Barking and improved pedestrian experience. The truly mixed use scheme would promote vibrancy and activity for the community, blending retail, leisure, workspace, public space, health and educational uses together with town centre living, boosting the evening economy and positively regenerating the town centre.

³⁹ CDE.2

⁴⁰ XX Mr Harley by Mr Elvin KC

117. It is seen as the cornerstone to the town centre regeneration and there would be substantial public benefits that would contribute to the improvement of the economic, social and environmental wellbeing of the area. Notably, very few objectors had objections to the principle of the scheme and most recognised the regeneration to be positive.
118. Given the obvious need to redevelop the site and regenerate the town centre, and the substantial benefits in the public interest, there is an extremely compelling case for the acquisition of the Order Lands.

Availability of resources and deliverability

119. The CPO scheme is to be delivered by Lagmar (Barking) Ltd, *a wholly owned, specific purpose development vehicle*⁴¹ of PBBE. The shares in Lagmar (Barking) Ltd were acquired from the Irish government's "bad bank" work-out vehicle, NAMA, by property fund manager Benson Elliot (BE). Evidence details that the recommended business plan was to pursue a redevelopment⁴², and it is Lagmar (Barking) Ltd who own the leasehold of the shopping centre. PBBE was formed through the acquisition of BE by PineBridge Investments in December 2020. PineBridge is a private, global fund manager. BE raises long term equity funds (e.g. pension funds) that invests into development or real estate projects.
120. In June 2021, PBBE acquired Sigma Capital plc, a build to rent development company already operating in Barking. Mr Cornforth, director of PBBE, explains that the acquisition offered⁴³ PBBE an insight into the new build rental market, specifically in Barking, along with a ready-made management platform for the completed residential blocks in the CPO scheme, should some of them be retained as long-term income investment rather than sold to owner/occupiers.
121. Mr Cornforth outlines in his evidence that BE has a track record of raising funds, the most recent equity fund raise in 2019 provided €836m of investment funds, and the 2 prior to that totalled €1.14bn⁴⁴. PineBridge had approximately \$148bn worth of assets under its management at the end of 2021⁴⁵.
122. He sets out that between 2010 and 2020, BE became a highly effective and well-established specialist real estate fund and asset manager, known for investing in town centre and urban revitalisation and regeneration programmes across Europe, and highly competent at bringing together the financial backing and operational capabilities to deliver complex property projects⁴⁶.
123. Owing to the merger of BE and PineBridge, PBBE appears to be a successful global financial services company with access to funds. However, it is Lagmar (Barking) Ltd, the leaseholder for the shopping centre, who is the proposed

⁴¹ AA/PC/1 - 3.1

⁴² AA/PC/1 - 4.11

⁴³ AA/PC/1 - 3.12

⁴⁴ AA/PC/1 - 3.6

⁴⁵ AA/PC/1 - 3.10

⁴⁶ AA/PC/1 - 3.7

developer of the CPO Scheme and party to the section 106 Agreement⁴⁷, Agreement for the grant of leases⁴⁸ (AGL) and Deed of Indemnity⁴⁹ (DI).

124. Funding for the CPO Scheme falls under 2 parts, one is the funding to acquire the land and third-party interests, and the other is the funding to implement the CPO Scheme for which the land is required.

Funding available for acquiring the land

125. To date, over £40 million has been spent in cash⁵⁰, and the developer expects another £20 million will be necessary prior to the commencement of development. This is a significant financial commitment, and one which not many investors could undertake because of the scale of upfront costs. The developer has also sought to engage in community collaboration and is a non-executive director of the Barking Enterprise Centre. The AA claims that this shows intent and belief in delivery from the developer.
126. The developer has also agreed to underwrite the AA's costs of obtaining vacant possession and the DI indemnifies the AA against costs incurred in promoting, making and securing the compulsory acquisition of the Order Lands and the compensation payments arising from acquisitions. Being debt free provides freedom for the developer in terms of negotiating leases and I understand this is designed to facilitate redevelopment. Furthermore, the developer has sought to renegotiate leases in the shopping centre prior to the CPO, which shows their intention to redevelop VFSC.
127. The developer's retained consultants, Avison Young (AY) and GCW maintain an estimate of acquisition costs for acquiring the land, which is regularly reviewed to reflect market circumstances and as more detail becomes available on individual interests. These were not presented to the inquiry, and many objectors claim that the financial offers to date have been below market value.
128. The AA also conceded that no budget has been built in for business extinguishment costs. Ms Squires (negotiations witness) explained that it would be unusual to include them at this stage, and they would be built in when the extinguishments were confirmed. This would be from the contingency funds.
129. Yet, given the high level of occupancy in the town centre, the number of outstanding objections and difficulties with relocations, it is likely that several businesses could be extinguished if the CPO were confirmed. The business extinguishment costs could be very expensive, and the fact that they have not been included, even as estimations, concerns me.
130. Nevertheless, given the significant amount that has already been spent in cash, and that £20 million more has been allocated, if the scheme is viable, I am satisfied that there would be a likelihood of funds available to acquire the land. However, the increases from any business extinguishment costs could affect the overall funds.

⁴⁷ CDC.2

⁴⁸ CDG.2

⁴⁹ CDG.3

⁵⁰ AA/PC/1 - 5.17

Funding available for implementing the scheme for which the land is required

The viability assessment

131. In the developer's opinion, the CPO Scheme is viable⁵¹ and meets the "criteria for acceptable returns⁵²". Mr Cornforth claimed that on the latest appraisals⁵³, there would be a 14.8% profit achieved from the development against a target of 15%. Mr Cornforth states that the appraisals are underpinned by independent advice from the development team chosen for their track records, experience and expertise in projects of complexity. However, no recent viability appraisal or evidence was presented to validate these assertions.
132. For a CPO to be confirmed, I must consider the potential financial viability of the scheme for which the land is being acquired. Whilst a general indication of funding intentions will usually suffice to support a reasonable prospect that a scheme will proceed, the viability appraisal review for the outline planning application found the scheme to be "substantially unviable"⁵⁴. The outline planning application was determined in full knowledge of this, and the AA and developer were fully aware of these conclusions, although the evidence was only added to the inquiry documents at the request of an objector.
133. Because of this, I consider it unusual that an updated viability appraisal was not presented. This is principally because if a scheme is unviable, it is highly unlikely to proceed for obvious reasons.
134. Whilst the AA claim that objections on the grounds of viability were not raised until at the inquiry, and thus had no fair notice, it is the AA's responsibility to provide substantive information as to the financial viability of the scheme in light of the CPO Guidance, and to be able to defend this.
135. The only substantive evidence of viability I have is the September 2016 Financial Viability Assessment⁵⁵ (FVA) prepared by DS2 and the Financial Viability Review carried out by GVA⁵⁶ (December 2016). Both conclude the scheme to be unviable at that time, with GVA's review concluding that "both DS2's and GVA's calculations find the scheme to be substantially unviable"⁵⁷. The FVA detailed that "delivery of the scheme will rely upon the growth of residential and commercial values in Barking Town Centre. In respect of residential, this anticipated growth will allow more alignment with comparable, but still affordable, locations in east London...Barking is currently undervalued... It is therefore strongly expected to experience value growth over the next few years through the delivery of new high quality development"⁵⁸. However, GVA had significant concerns about the deliverability and fundability and questioned why the developer would be pursuing a scheme of this nature.

⁵¹ AA/PC/1 - 5.5

⁵² AA/PC/1 - 5.43

⁵³ Quarter 1 of 2022

⁵⁴ CDC.11

⁵⁵ CDC.12

⁵⁶ CDC.11

⁵⁷ CDC.11 - 13.6

⁵⁸ CDC.12 page 9

136. The GVA Review also set out that “even if the developer takes no profit, the residual land value is £400,000, i.e. £41m below the existing use value, before the 20% premium is added. To generate a residual land value of £49m, which equates to the benchmark land value, sales would need to increase to £770 per square foot. This is 62% growth on current [2016] values”.
137. The CPO Guidance states, “The greater the uncertainty about the financial viability of the scheme, the more compelling the other grounds for undertaking the compulsory purchase will need to be⁵⁹”.
138. In this case, the viability evidence from 2016 concludes that the scheme was substantially unviable. There was no uncertainty about this. This was not disputed by the AA. Mr Cornforth agreed that it was substantially unviable based on that process and did not dispute the findings. He also explained that in 2016, when the viability appraisal was carried out, the scheme was marginal, and they would not have gone ahead at that point.
139. In the Financial Viability Review, GVA also detailed that over 30 properties were held under 3rd party ownership, and to enable the scheme to be brought forward, successful negotiations would need to take place. Parenthetically, few successful negotiations have taken place, with only 2 objections to the CPO being withdrawn prior to the closure of the inquiry. Notably, none of the withdrawn objections relate to land which the AA is seeking to acquire. Only 21-23 Ripple Road has been acquired from all interests. GVA set out that the negotiations may become protracted and costly, which would further impact on the viability of this scheme.
140. GLA’s comments⁶⁰ detailed that the viability assessments identify a negative value derived from the scheme, a significant deficit compared with the target profit, and that the scheme is only likely to be viable in the longer term.
141. This 2016 viability appraisal is, perhaps unsurprisingly, not relied upon by the AA.
142. During the inquiry, Mr Cornforth explained that the approach of PBBE to assessing viability is very different to a conventional ‘RICS Red Book’ viability assessment using standard models, such as ARGUS. Mr Cornforth explained that his company’s method produces a more ‘granular’ list, which seeks a long term return. However, he provided limited explanation as to what was the difference in their viability assessment as opposed to industry standard models.
143. It was also argued that the 2016 viability appraisal was prepared for the purposes of calculating affordable housing numbers. Nonetheless, it was a viability appraisal that was produced in support of the outline planning application, the purpose of which was to robustly test the maximum reasonable amount of affordable housing and other financial obligations that the proposals can viably support. I do understand how a viability appraisal for scheme delivery would be significantly different to one produced for a planning application, because the outcome of a viability appraisal is to conclude whether the value generated by a development is more or less than the cost of developing it.

⁵⁹ Tier 2, Section 1, Paragraph 106

⁶⁰ CDC.15

144. The reason for not providing an updated viability appraisal is said to be linked to commercial confidentiality. To share the information at this stage could, I am advised, hamper the deliverability of the scheme by releasing sensitive information to the open market. Whilst I understand the sensitivities to sharing this type of information, I am left in a position whereby the only independent evidence of viability presented concludes the CPO scheme to be substantially unviable 6 years ago.
145. An updated appraisal could have been redacted, or even, as suggested by Mr Elvin KC (representing the 24-34 Station Parade), subjected to a 'data room' exercise, carried out by an independent expert under a non-disclosure agreement. This would have reviewed the appraisal and provided an independent peer review that the scheme was viable.
146. The AA claim that this would have taken me nowhere, as this evidence could not have been tested. I disagree. It would have provided an independent and clear indication that the scheme was viable when assessed by an expert in the field. At the very least, it would have provided some comfort as to the likelihood of the potential financial viability, given the gravity of the conclusions in the viability appraisal that I do have.

Information presented to demonstrate viability in the absence of a viability appraisal

147. In 2016, it was acknowledged that the delivery of the scheme would rely upon growth in primarily residential and commercial land values in Barking town centre. These were expected to come about through the regeneration of the town centre, of which this proposal would be a key part. The convergence effect from the 2012 Olympics was slowly making its way east and planning policies were directing development eastwards, such that for the AA and developer, it was not a question of 'if' the development would come forward, but 'when'.
148. Mr Cornforth set out that the company pursues opportunities where unrecognised growth potential resides, are ahead of the market, and this is how they came to acquire VFSC. Investing funds into this type of real estate, Mr Cornforth explained, there would be a negative before a positive. His judgement was that in due course, the development would become viable as the alternative uses became more commercially attractive than the existing uses. The developer is seeking to invest longer term in change and their assessment of financial returns requires them to consider the development within the context of future transformation brought about by existing and emerging trends as well as the scheme itself. The proposal was not viable in 2016, but Mr Cornforth considers that it has now become viable due to a combination of expected market changes that were built into the business plan.
149. The quality of the scheme is also said to be critical in achieving the step change in values in the town centre, along with the value added by including creative spaces, such as the inclusion of affordable workspace. I agree that a higher quality scheme is likely to attract higher values and create a superior transformational change in the town centre. However, a higher quality scheme attracts a higher price to develop, and it is common knowledge that build costs have soared in recent years.

150. I accept that market dynamics and economic circumstances in Barking have changed in the past 5 years. In the December 2021-2022, Barking's annual price change in average residential values was 7.7%⁶¹, compared to London at 5.5%⁶². CBRE⁶³ also forecasts 22% price growth and 16% rental growth in the property market in Barking over the next 5 years, with comparable figures of 19% and 14% for London.
151. Other trends which are driving the viability of the scheme are said to comprise of population growth that will ensure sustained demand for housing, affordability⁶⁴ and the regeneration effect⁶⁵. Vicarage Field values are forecast to rise by 26.5% by the end of 2025 (assumed construction start in 2022) on account of the Scheme's regeneration effect⁶⁶.
152. However, even accounting for the population growth, affordability factor and the regeneration effect, the increase in land value and projected increases in land value is unlikely to reflect a 62% growth in values from 2016⁶⁷, which took no account of unforeseen economic effects, such as the pandemic, the war in Ukraine and the steep rising costs of materials and energy. Even Mr Cornforth admitted that whilst some investments perform better than others in a portfolio of investments, there would still be an expectation of some return.
153. Extensive research has been carried out to demonstrate that land values are rising, and this is said to make the scheme financially viable. I also understand that the CPO Scheme is the catalyst for the redevelopment of the town centre. Therefore, it is reliant upon itself to invest and change the land values to create the 'regeneration effect'. A 'catch 22' situation.
154. Nevertheless, there is a fundamental lack of substantive, factual evidence to demonstrate that the scheme is financially viable. I accept that the CPO Guidance does not impose this as a requirement. However, given the conclusions in 2016, and the absence of an updated situation, I cannot be certain as to the potential financial viability of the scheme for which the land is being acquired.
155. Given the developer's confidence that the scheme is viable, backed up by its team of professional consultants, I simply do not understand why an up to date appraisal was not presented, even if this was redacted or subject to an independent review.

The legal agreements

156. The AGL and a DI were entered into between Lagmar (Barking) Ltd (as developer) and the AA in March 2021. The redacted version of the DI details that, if the CPO is confirmed, it is for the developer to decide if the CPO is acceptable (with no definition of what may be acceptable). There is no obligation for it to trigger implementation of the CPO. There is also no obligation to require all the land in the CPO lands to be included in the vesting, and this remains at the discretion of the developer.

⁶¹ AA/PC/2 - Appendix 11

⁶² AA/PC/2 - Appendix 16

⁶³ AA/PC/2 - Appendix 20

⁶⁴ AA/PC/1 - 5.37.3 - LBBB was in the top 3 most affordable areas in Greater London for 1st time buyers

⁶⁵ AA/PC/2 - Appendix 22 and 23

⁶⁶ AA/PC/2 - Appendix 23

⁶⁷ As indicated in the GVA Review (CDC.11)

157. The AGL, also redacted, contains clauses that require the General Conditions to be met. These include the acceptability of the CPO to the developer and the developer's own reasonable opinion of viability, and phase conditions (for phase 1 only). It is for the developer to decide if the CPO Scheme progresses and this decision could be made by the Developer's Nominee, which the AA has no control over the appointment of. There is also provision for a redesign of the scheme if the developer decides it is not viable or sufficiently profitable. Furthermore, there is little to stop PBBE selling the shares of Lagmar (Barking) Ltd, akin to how it acquired the company.
158. The legal agreements provide a high amount of control for the developer, and little control for the AA to get the scheme implemented or, importantly, completed. I accept the leasehold held by the developer on VFSC expires in 2115 and it is a depreciating asset. The AGL would enable the developer to commence new leases with the drawdown of each phase and it was asserted that there is a strong incentive to move the project forward. This is because the value of the asset would be increased through the drawdown of the leases, but this would only occur if the General Conditions were met.
159. Mr Cornforth also considers the development contains several aspects that ensure it would be resilient to mitigate for change to risk profile and the market. These include the permeable footprint, the block based format that separates the commercial and residential uses, flexibility in occupation. The mixed uses would protect against financial risk; yet as over 80% would be residential, this would underpin financial returns. It is also asserted that the scheme is suitably future proofed, meeting the 10 future-proofing characteristics of the 2021 National Design Guide⁶⁸.
160. However, no matter how flexible a scheme is, future operators will need to know what footprint they are going to occupy, and what price they are paying. The scheme will need to be presented as detailed plans for reserved matters and the apparent flexibility provides me with little confidence that the General Conditions will be adhered to, particularly the viability conditions. Moreover, whilst the residential development would underpin the scheme and provides some degree of financial resilience, if the land values have not significantly increased, it would remain unviable.
161. Mr Cornforth states that in the hypothetical event that if one of the General Conditions was not satisfied, there would be a strong impetus in favour of completing the project rather than allowing the fact that a particular condition had not been fully satisfied to bring it to a halt. Full account would be taken of the very substantial sums that would by then have been spent on progressing the project, and the ongoing depreciation in value of the existing asset in the face of its impending obsolescence were the development to pause⁶⁹.
162. However, despite all assurances from Mr Cornforth, I do not understand why the developer would waive a legal agreement's conditions to proceed with a scheme if it was not acceptable to them. To my mind, it is unlikely that a developer, with investors who want to see returns, would continue to fund a project if it does not satisfy its General Conditions, principally that of viability.

⁶⁸ AA/PC/2 - Appendix 7

⁶⁹ AA/PC/1 - 5.14

Future financing

163. Mr Cornforth details that PBBE has funds and access to funds to ensure that there are no financial impediments to the scheme being developed⁷⁰. I have been provided with no reason to doubt that PBBE has access to funds. Indeed, this is illustrated by the fact that to date over £40 million has been spent.
164. Future financing would be drawn from PBBE funds or through a bespoke equity stream. PBBE's normal practice is to use a bespoke financing advisory firm to assist in arranging any external debt in construction lending. Mr Cornforth explained at the inquiry that funds are raised through PBBE by investors investing their money into ideas or a theme, rather than a specific project. It is a longer term strategy and the expectation to deliver returns from a fund rather than a project enables PBBE to insulate against a project that may not be working out, focusing on long term rather than profit from a viability perspective.
165. Nevertheless, it would be reasonable to assume that investors would seek to see a return on investment, and I fail to see why money would be invested into a project if it were not considered to be viable at the outset, despite this asserted longer term strategy. Furthermore, the CPO Guidance refers to necessary resources being likely to be available within a reasonable time scale.

Future occupancy

166. Mr Cornforth was positive and confident that the type of negotiations currently engaged with are consistent with the commercial attractiveness of the scheme. However, negotiations are ongoing, and only speculative, notional information has been provided.
167. I am advised that around 50% of Block A's commercial area, allocated for co-working, affordable and creative workspaces is under negotiations. Block C is subject to active occupier negotiation, with the cinema space and adjoining unit reserved by a national operator, looking to deliver a family leisure destination, but no further details were provided and no final agreement had been reached.
168. Block C is also reserved for the Health Centre, and from discussions between the CCG and Mr Cornforth, the amount of space for the Health Centre is anticipated to be 2.5 times greater than the amount of space required in the section 106 agreement. However, again, no details were provided or agreements finalised.
169. Block B would be split between the Food Hub and a branded food convenience store. The developer has established strong levels of interest from operators of the food store, but the operator would not commit until non-conditional timelines could be offered and agreed.
170. The Food Hub has support and is a policy priority of the AA and the City of London Corporation to ensure delivery. I accept that the Food Hub's preferred location is in the CPO Scheme, and the location would occupy a large proportion of Block B. Thus, it may de-risk this element of commercial space.

⁷⁰ AA/PC/1 - 5.25

171. Mr Cornforth also claims that the economic and business changes apparent since the Covid pandemic are strongly supportive of a mixed-use commercial offer the Scheme can deliver, basing this upon AY's non-residential uses analysis⁷¹, which provides various conclusions, such as:

- scope to attract small and medium enterprises to the town centre as workspaces in competing centres are fairly poor;
- growth in demand for leisure uses and an absence in local competing centres;
- existing and growing residential population in the town centre, which will underpin demand for leisure uses, food and beverage and workspaces;
- significant investment in film, media and TV with the studios at Dagenham East, the largest studios in London.

172. The findings in this report were unchallenged, and I agree that the scheme is strongly supportive of a mixed use commercial offer.

173. Nevertheless, there is a lack of any real certainty as to who specifically might occupy the Scheme, nor any agreements with commercial operators that have agreed to occupy space, even if these were redacted or provide a general indication of intent. I accept commercial confidentiality is required, but the lack of anything other than Mr Cornforth's expectations does not persuade me that future commercial occupancy would be certain.

Conclusion

174. If the CPO scheme was delivered, it would act as a catalyst for the regeneration of the town centre. This is likely to increase land values based on the evidence before me and there is an intention to deliver the development.

175. However, no financial viability appraisals or substantive information has been presented to demonstrate that the scheme is financially viable, and despite assurances from the AA, I am concerned that the increases in land value since 2016 may not be as significant as necessary to secure the scheme's delivery.

176. Accounting for the spend to date, it is clear that PBBE has funds and would have access to funds. But no developer or financial services company would invest in a product that was not going to make a return. It would not make financial sense, no matter how invested they are in the scheme, and whilst they have underwritten the costs of the CPO process, there is no commitment to build out the scheme. Furthermore, the costs associated with acquiring the land may be considerably more than anticipated when business extinguishment costs are factored in. Additionally, no concrete evidence has been presented in relation to future occupation.

177. Thus, when considering the potential financial viability of the scheme for which the land is being acquired, there is simply insufficient substantive information presented to convince or reassure me that the scheme is financially viable.

178. Consequently, I cannot be certain that the necessary resources are likely to be available within a reasonable time-scale and I am unable to conclude that

⁷¹ AA/PC/2 - Appendix 26

there is a reasonable prospect that the scheme will proceed and would be delivered.

Alternative proposals and whether regeneration is more likely by the CPO

24-34 Station Parade proposals

179. A pre-application scheme⁷² was submitted to the LPA in 2018 by Mr Ali Kadhodayi-Kholgi (Mr Ali) and his wife, Mrs Jahanpanah (Mrs Ali), as owners of 24, 26, 28 and 34 Station Parade. It also included 30 and 32 Station Parade, which is owned by the personal representatives of Paula Mary Baker (deceased). The owners of 30 and 32 Station Parade are supporting and adopting the case that was presented by Mr and Mrs Ali⁷³, however it is Mr and Mrs Ali who would be pursuing the alternative proposals. I shall refer to both parties as 24-34 Station Parade properties (SPP).
180. The pre-application proposal included retail units at ground floor with a hotel development to the upper floors. Negative feedback⁷⁴ was given by the LPA, specifically that the proposal was for an 8 storey building and the outline permission for the CPO Scheme was for 7 storeys with a stepped typology. The scheme was not considered to be acceptable, and advice states that the scale, massing and design would be incompatible with and inhibit the delivery of the outline planning permission for the CPO Scheme.
181. It also detailed that a standalone scheme would be assessed within the existing context and a proposal would need to provide detailed justification for the height, scale and massing in relation to existing surrounding properties and the nearby heritage assets.
182. However, the following year, the LPA approved a non-material amendment application at 24-38 Station Parade to increase the parameter height of Block B4 in the outline permission, from a 7 to 8 storey building. This is wholly inconsistent with the advice given to SPP and given the negative outcome of the pre-application advice, a planning application was not pursued by Mr and Mrs Ali.
183. It should have been clear to the AA that SPP were seeking to propose an alternative scheme on the site, but the AA did not seek to engage with SPP to facilitate this. That said, the CPO Guidance requires the AA to negotiate to acquire the land, not consider alternative proposals.
184. Mr Ali has willing tenants that he advised would be happy to relocate while he carried out works to his other premises. I also heard several of them detail this at the inquiry. He would also pay them compensation for re-location. He is confident the owners of 30 and 32 Station Parade would cooperate with the re-development since they have already signed up to a Collaboration Agreement⁷⁵.
185. Three alternative development options are proposed by SPP in evidence⁷⁶. First, the pre-application discussion proposal. The pre-application proposal would comply with the current parameters, and the elevation shows 6 regular

⁷² AAKK-6

⁷³ PMBD/1

⁷⁴ AAKK-5

⁷⁵ INQ14.1

⁷⁶ AAKK/IR/1

- levels above the 'field' podium. This is the same number of floors as the reserved matters application. It could be an appropriate alternative proposal, however, the pre-application documents contain very limited information or detailed elevations, and has not been pursued any further.
186. Second, a refurbishment of the existing site. This would retain the existing building, but redevelop and reconfigure the site, with roof extensions. Prof. Ritchie, appearing for Mr and Mrs Ali describes⁷⁷ the benefits of this as enabling the hotel to continue to serve the community, ensuring the early 20th century 'high street' architecture fits with Station Parade. He also claims that with a new roof and new dormer windows, refurbished brickwork, a reconstructed new retail façade, it would have a fresh and acceptable appearance.
187. However, this option would not achieve the transformative change to the area or create the gateway to the CPO Scheme. It would, at best, improve the appearance of the properties. However, the width of the shopping centre, together with 24-38 Station Parade, are necessary to achieve the 'gateway' development and notable change when arriving in Barking. There could also be potential complications to the side return, and how this would be treated with the rest of the CPO scheme. Therefore, I do not consider it to be an appropriate alternative proposal that could achieve the purposes for which the AA is seeking to acquire the land.
188. The third scheme proposes an 8 storey, 155 bedroom hotel with ground floor retail units. This is described as "integrated" with the CPO scheme and could potentially contribute to the creation of a transformative entrance to the rest of the site and could be compliant with the Design Code that will be employed in the reserved matters applications. I acknowledge some amendments would be needed for 36-38 Station Parade, and there could also be delays to the wider scheme and construction issues, yet there is the possibility that a suitably designed scheme could be presented.
189. Furthermore, the uses within Block B4 could be provided elsewhere in the CPO Scheme. A 155 bedroom hotel would enable one of the 5 towers to be re-purposed to residential, creating a greater number of dwellings in the rest of the scheme. The leisure use could also be provided elsewhere given the flexibility of the design and commercial floorspace would be provided at ground floor in both the reserved matters and alternative proposal. Therefore, the 'integrated' scheme presents an appropriate alternative proposal that merits investigation.
190. Nevertheless, SPP did not pursue any proposals after the pre-application submission. Whilst their objections to the CPO were clear in that they wished to pursue their own development, no planning applications were submitted to the LPA, nor any Certificate of Appropriate Alternative Development (CAAD). It also does not appear to form part of the ongoing negotiations running up to the inquiry. The only plans before me are sketches from Prof. Ritchie's proof of evidence. The Collaboration Agreement was also drawn up recently, dated 19 April 2022, the day before the inquiry opened. All the above suggests to me that these alternative developments are proposed in an attempt to remove the SPP land from the CPO, not with a real intention to pursue the

⁷⁷ AAKK/IR/1 - 5.3.2

alternatives in order to deliver the purposes for which the AA is proposing to acquire the land.

191. Mr Ali also explained that he had recently renovated the hotel over the past few years and spent "quite a lot". It was also clear to me that Mr and Mrs Ali are happy with their existing hotel, and quite rightly proud of the services it provides. Therefore, save for the threat of a CPO, I do not understand why Mr and Mrs Ali would pursue a scheme to demolish the building.
192. The Collaboration Agreement also does not include several arrangements that are likely to be necessary if realistically pursuing a planning application. These include any agreement as to the form and content of a planning application, any timetable for pursuing a planning application, any agreement for making land available for development, funding the development or shares of profits. Notably, it does not deal with land ownership.
193. Therefore, whilst there is a Collaboration Agreement and the personal representatives support Mr and Mrs Ali and are on good terms, there is very little to secure land ownership consent to re-develop the whole 24-34 Station Parade site. This is a significant obstacle in presenting an appropriate alternative proposal that would have a likelihood of delivery.
194. Furthermore, whilst some tenants may be willing to re-locate, there could be problems with some leases. For example, evidence⁷⁸ was given that details Mr and Mrs Ali have entered a lease with Coral bookmakers in January 2022 for 12 years, with no landlord break clause. Mr Ali was confident that a deal could be done because Coral has been acquired by Ladbrokes, and there is no asserted need for 2 betting shops in the town centre. However, I have no tangible evidence that this would occur. HMD also recently renewed their lease until 2039.
195. Mr Ali was very confident that he had the means to develop the alternative scheme. He claimed in evidence he was "pretty well off"⁷⁹, with over 90% of his income derived from the hotel. He intends to finance the scheme entirely himself⁸⁰, by mortgaging existing properties he owns. The evidence⁸¹ presented shows indicative terms of borrowing £6 million, with the potential to increase to £10 million if planning permission was secured for a hotel with 150 rooms. However, these calculations show combined interest provision per month of nearly £92,000 if borrowing just under £10 million, and around £63,000 if borrowing about £6.8 million⁸².
196. Whilst Mr Ali and Mrs Ali may have savings, given that over 90% of their income is derived from Barking Hotel, there would be no substantial income source as of the commencement of the development. There would also be no income stream from the numerous tenants. Even with their other rental properties, I simply do not understand how the repayments could be paid.
197. Additionally, even though a development partnership has been mooted with Lindhill Properties Ltd⁸³, no agreements are in place between the parties to

⁷⁸ Ms Squires XC in response to 24-34SP's case

⁷⁹ Mr Ali XX by Mr Pereira KC

⁸⁰ Mr Ali XX by Mr Pereira KC

⁸¹ INQ 14.2

⁸² If combining 3 loan offers for *total net day one advance* sums of £2,674,905, £2,160,550 and £2,008,701 to loan £6,844,156 from INQ 14.2.

⁸³ AA/KK/BB1

fund or redevelop the site. The untested written evidence⁸⁴ of Mr Brunson details that “the intention is to explore potential joint venture structures or (if funded directly) to act as Development Manager for the development and delivery of the project.” Additionally, Mr Brunson anticipates a build cost of £15.5m for the 155 bed hotel. This is significantly more than the £6 million or £10 million indicative terms.

198. Therefore, I am not persuaded that Mr and Mrs Ali would have the ability to repay funds that would enable them to proceed with the alternative development.
199. Moreover, the reserved matters permission also facilitates a sub-station relocation which serves a wider part of the site, along with connections to the future Barking Town Centre District Heating Network. Alternative proposals would also impact on the phasing, particularly sequencing demolition of the shopping centre, along with cycle storage being in this block, but designed to carry the load for later phases. The field level podium also connects to the wider site which provides the shared amenity space. These would be compromised if alternative proposals were brought forward.
200. Consequently, although the ‘integrated’ third scheme presents an alternative proposal, I am unconvinced that there is a realistic proposition of it being delivered if 24-34 Station Parade were removed from the CPO. Furthermore, there are comprehensive benefits associated with developing Block B4 as approved with the rest of the scheme. As a result, it does not represent an appropriate alternative development.

NHS PS proposals

201. Both the AA and the NHS PS have presented draft proposals for the former Vicarage Field Health Centre, with the intention to attempt to agree a land valuation prior to the inquiry. The health centre is surplus to requirements and the NHS PS has repeatedly stated that it is a willing seller.
202. Most of these schemes relate to a ‘no scheme principle’ and were not proposed as alternatives when considering whether the purpose for which the AA is proposing to acquire the land could be achieved by any other means⁸⁵. Therefore, I will address the implications of these other appraisals in the Outstanding Objections section.
203. Notwithstanding this, alternative proposals were presented by the NHS PS in its evidence⁸⁶ to the inquiry. The purpose of these proposals was said to demonstrate alternatives, however Prof. Ritchie conceded under cross examination that the purpose of the alternatives in his evidence was to inform valuation and compensation. He had no instructions to design a scheme that would be submitted for planning permission and none of them had been produced with a view to pursuing a planning application. The alternatives in his evidence were to demonstrate capacity and volume of the site, to inform negotiations between the AA and the NHS PS.

⁸⁴ He was unable to appear at the inquiry.

⁸⁵ Tier 2, Section 1, Paragraph 106 of the CPO Guidance

⁸⁶ NHSPS/IR/1

204. Nevertheless, for completeness, I have considered Study 2 “Integrated” and Study 3⁸⁷. Study 2 “Integrated” shows a scheme that could be built before, during or after the CPO Scheme, although the construction of the ramp to the servicing area would require careful engineering and construction, and would need further refinement⁸⁸. Study 3 is a standalone orthogonal building for residential development, showing a range of heights, with retention of the London Plane tree.
205. Study 2 “Integrated” could theoretically be delivered with the CPO scheme and may deliver a higher number of homes than the existing tower could do. However, it would considerably reduce the floorplate of Block C and detrimentally impact upon the cinema use proposed, and other uses above, such as the podium field level. I heard evidence that, despite the flexible design, the only realistic location for the cinema is in this position. Block B could accommodate it, but this would impact upon the delivery of the Food Hub. Furthermore, the design approach to the tower design in Professor Ritchie’s scheme does not relate to the CPO Scheme. It looks like a bulge to the slender ‘lozenge’ towers, and I am concerned that the overall design quality of the scheme could be compromised, despite it having the potential to be of standalone high quality. Lastly, there could be implications on the quality of accommodation proposed for the future residents, such as single aspect homes.
206. Study 3 has little relationship with the CPO Scheme and, even though it may deliver a high number of homes, would detrimentally impact on the delivery of the uses in Block C. Also, it is unlikely that the London Plane tree could be retained due to the proximity of development and the root spread. There would also be a high proportion of single aspect dwellings. Lastly, whilst it is presumed the access point could still be delivered, I am uncertain that it could be delivered in the same way the CPO scheme proposes with the realignment of Vicarage Drive to access the school and the public realm enhancements.
207. Particularly in the case of Study 3, given this is a standalone scheme, and it is in the CA and close to a listed building, there may be harm to the heritage assets, and a heritage balance would need to be undertaken. The public benefits may not outweigh the heritage harm as the scheme would deliver fewer comprehensive benefits than the CPO Scheme. This could be an impediment. However, I accept there is a theoretical possibility that a scheme could possibly be designed to ensure there was no heritage harm.
208. If Study 2 “integrated” were proposed as amendments to the CPO Scheme, a new heritage balance would be undertaken (given the CPO Scheme undertook one) and the outcome of this would not be certain given the changes to the tower designs and alterations to the uses proposed.
209. Overall, the comprehensive redevelopment of the scheme is likely to be the best means by which the large scale benefits of the scheme could be realised. Furthermore, the improvements to Vicarage Drive, and the public realm along it, are location specific. The cinema, music venue and health centre have limited potential to be located elsewhere without the larger floor plate in Block C, which is gained from the acquisition of Vicarage Field Health Centre and

⁸⁷ Study 1 and Study 2 are ‘no scheme principle’ proposals

⁸⁸ XX Professor Ritchie by Mr Pereira KC

13-23 Ripple Road. These are significant and fundamental parts of the development.

210. Moreover, whilst the NHS PS claim that the AA should have worked with them to pursue alternative proposals, they entered discussions as a willing seller looking to dispose of an asset. Very few suggestions were put forward until nearing the inquiry that the NHS PS wanted to develop a scheme with the AA. Indeed, the NHS PS's consultant Montague Evans were appointed with the intent to dispose of the site as a 'solus transaction'⁸⁹, which is where a disposal involves a negotiated sale, without testing the market, to a selected purchaser – for example a charity or a local authority⁹⁰. Furthermore, the correspondence⁹¹ on behalf of the NHS PS discusses putting the site on the market if a deal cannot be done with the AA.
211. Therefore, whilst I have no doubt that the NHS PS has developed sites and would look to whatever means possible to seek the best possible return for the public purse, I am not persuaded that it would develop the alternative schemes if I were to remove Plot 22 from the CPO. Thus, I do not consider them to be suitable alternative proposals.

36-38 Station Parade proposals

212. Mr Deane suggested in his objection (Acutus Construction Limited) that he was in the process of submitting a plan for approval to the LPA for a 40 room hotel. He also presented other sites for the affordable housing. During the inquiry, Mr Deane said that he always had proposals and referred to several different options such as retaining the retail unit and adding more homes. However, Mr Deane has not sought pre-application advice or submitted a planning application.
213. Therefore, the suggestion that there is an alternative to the CPO Scheme in respect of his land has little substance and I do not consider there to be any suitable alternative proposals. The other sites presented in his statement⁹² for housing would not achieve the same benefits as the comprehensive CPO scheme.

The suitability of any alternative locations

214. For completeness, the acquisition of 21-23 Ripple Road is critical to deliver road widening and the access along Vicarage Drive. 13-19 Ripple Road contains land use proposals that could not be located elsewhere in the scheme, that are critical to the success of it being truly mixed use and achieving the wider benefits.

Conclusion

215. Current and emerging planning policy points towards the delivery of comprehensive redevelopment on this site. The whole Order Lands are required to deliver this scale of change necessary in Barking to realise the regeneration effects and reduce the levels of deprivation, and there are no alternatives proposals that would achieve the same purposes for which the AA is proposing to acquire the land.

⁸⁹ INQ34 Mr Williams Proof of Evidence 2.2

⁹⁰ NHSPS-2 Estate Code 4.126

⁹¹ NHSPS-5

⁹² DAB/1

Other potential impediments

Delays in preparation of reserved matters applications

216. There has been a notable delay in the preparation and submission of reserved matters applications by the developer. The outline planning permission will expire on 19 April 2023⁹³ and from what I heard, very little work on the detailed plans for the reserved matters applications for the later phases had been carried out up to the inquiry. There has been no pre-application discussions and the LPA has not seen any of the detailed plans for the reserved matters. Conditions which require the submission of phasing plans have not been discharged either. There has been a notable absence of specific phasing information, and this was also redacted from the DI and AGL.
217. The scheme is extremely large and all remaining reserved matters applications, except for the primary school site, need to be submitted. This is a momentous amount of work to be carried out prior to April 2023.
218. Whilst the AA claims it has been awaiting the outcome of this CPO decision, and the witnesses appeared confident that these timescales could be met, it is likely to be extremely tight. Given the CPO was served over a year ago, it concerns me greatly that no detailed plans have yet been worked up and this could represent an impediment to the delivery.

The COVID-19 Pandemic

219. Many objectors refer to the impact of the pandemic upon the scheme, and its resilience and deliverability given the impact that it had upon many commercial sectors and the increase in home working. The AA considers that the economic and business changes apparent since the Covid pandemic are strongly supportive of the mixed-use commercial offer the Scheme would deliver⁹⁴. I agree with the AA.
220. The CPO scheme, as outlined above, aligns with the AA's aspiration of a '15 minute city' concept set out in the Barking Town Centre Regeneration Strategy⁹⁵. It would deliver a flexible town centre scheme that should be resilient to market and commercial fluctuations, moving away from the enclosed retail centre which currently exists.
221. Additionally, AY's Non-Residential Use Analysis⁹⁶ analyses the changes since the pandemic, which is strongly supportive of a mixed-use commercial offer, e.g. hybrid working with employees returning to the office on a flexible basis to improve their wellbeing and to interact with colleagues.
222. Mr Cornforth⁹⁷ also details that the London Local Enterprise Action Partnership states "Remote working gives rise to the viability of 'hub and spoke' flexible workspace hubs across the city. Outer London's high streets can benefit from this latent demand, with the end of line stations being able to serve their residential neighbourhoods, as well as their wider commuter catchments".

⁹³ 6 years from the date the outline planning permission was granted

⁹⁴ AA/PC/1 Paragraph 5.38

⁹⁵ CDE.1

⁹⁶ AA/PC/2 – Appendix 7

⁹⁷ AA/PC/6 Paragraph 3.9-3.10

223. Consequently, given that Barking has convenient and excellent public transport access into London, it will benefit considerably from this shift in demand. This represents an opportunity for Barking town centre to attract residential and commercial offers and would not be an impediment to delivery.

Stopping up Order

224. The objection to the Stopping Up Order for St Awdry's Walk has been withdrawn and this no longer represents an impediment.

THE OUTSTANDING OBJECTIONS

225. The CPO Guidance sets out that acquiring authorities are expected to provide evidence that meaningful attempts at negotiation have been pursued or at least genuinely attempted⁹⁸. Paragraph 19⁹⁹ details what acquiring authorities should consider when negotiating. The AA must demonstrate that it has taken reasonable steps to acquire all the land and rights in the Order by agreement. Compulsory purchase is intended as a last resort.
226. At the time the CPO was made, there were 63 qualifying objections and 3 non-statutory objectors. There was also a Section 16 representation from Network Rail, which has since been withdrawn. One more objection was also withdrawn, relating to new rights to be acquired at Focal House, 12-18 Station Parade (CPO Plot 39), leaving 65 remaining objectors. Despite Ms Blackman's attempts to explain why there has been so few withdrawals¹⁰⁰, I still consider there to be an unusually high number of remaining objectors, given that only 3 objections have been withdrawn in total and none of these relate to any land which is to be acquired.
227. However, I acknowledge the developer has re-negotiated terms with nearly all units in the shopping centre to secure vacant possession when necessary. They have also successfully achieved high occupancy through concessionary rents and use by community enterprises. I also acknowledge that many objectors are tenants and have followed their landlord's objections to the scheme.
228. On the last day of the inquiry, the AA provided me with an updated Schedule of Objections¹⁰¹ (SoO). This set out the negotiation position of the AA with each objector to the CPO.

Overall approach to negotiations

Providing full information at the outset

229. The AA appears to have tried to engage with landowners, tenants, occupiers and leaseholders in the Order Lands over several years, primarily through letters and emails. All those with an interest in the land were sent letters from as early as 2015 seeking to acquire the land by private treaty. Another letter was sent to all registered interests in January 2018¹⁰² to seek to acquire each third party interest by agreement. The letter identified phone numbers and email

⁹⁸ Tier 1, Stage 3, Paragraph 17

⁹⁹ Tier 1, Stage 3

¹⁰⁰ INQ33

¹⁰¹ INQ41

¹⁰² AA/AS/2d

addresses and outlined the scheme. It provided information that construction was planned to begin in spring/summer 2019. However, this letter did not mention compulsory purchase, never mind provide full information from the outset about what the compulsory purchase process involves, and the rights and duties of those affected.

230. I understand that a dedicated scheme website was set up to make information readily available for those needing support, along with a website for those with a property interest, hosted by the Programme Officer. However, it is unclear when these websites were set up. Furthermore, objectors would have to seek out this information, and were not provided with website information in January 2018.
231. Notwithstanding this, I recognise that other letters were sent, and indeed, a letter¹⁰³ to Mr Ali in April 2018 set out that the Council had agreed in principle to use CPO powers to acquire land, and that the AA would pay reasonable fees for a surveyor to negotiate.
232. However, based on the evidence before me, only 10 days before the CPO was made¹⁰⁴, was a letter¹⁰⁵ sent from the Council to all those with a land interest detailing that CPO powers would be used and an indicative date of when the CPO would be made, along with outlining the scheme. At the same time, letters¹⁰⁶ were sent from GCW, making financial offers to acquire properties by private treaty and detailed that works would commence Summer 2022. They also set out that the AA would pay reasonable fees for a surveyor to negotiate.
233. Whilst the AA appear to have attempted to provide information, I am unable to conclude that full information was provided at the outset of this process, particularly relating to what the compulsory purchase process involves, and notably the rights and duties of those affected. The batch letters sent 10 days before making the CPO was tardy, and even these letters contain limited information about what the compulsory purchase process involves, and the rights and duties of those affected.
234. Furthermore, despite letters being sent to the parties subject to the CPO, few meetings between interested parties and the AA have taken place. The AA has offered to arrange meetings, but there has been little engagement from many parties, with many of the objectors ignoring the letters or disengaging from the process. Assertions are made from various objectors¹⁰⁷ about the methods of negotiations, particularly in the earlier years, including dismissive, condescending or threatening behaviour, being only interested in 'bricks and mortar' and not wanting to work with existing landowners. The prospect of a CPO is already very stressful to those directly affected, and if this was how objectors felt, it is hardly surprising that they disengaged.

Appointing a specified case manager during the preparatory stage

235. The AA and developer have appointed numerous case managers, such as Gowling WLG (UK) LLP, Savills, Londonewcastle, GCW, Lambert Smith

¹⁰³ AA/AS/4 Appendix 1

¹⁰⁴ 14 June 2021

¹⁰⁵ AA/AS/2e

¹⁰⁶ AA/AS/2g

¹⁰⁷ Mr and Mrs Ali, and Mr Sahota and Ms Khanda

Hampton, Savills and Currell Estate Agents (now Savills Estate Agents) and AY. AY have been the lead negotiators since April 2017, but have also used GCW and Lambert Smith Hampton.

236. GCW are specialist commercial agents carrying out the negotiations within the shopping centre and the street properties. AY are specialist compulsory purchase surveyors, working with GCW on negotiations and carrying out negotiations with NHS PS. AY also carried out initial negotiations prior to the making of the Order with Network Rail. Some early negotiations with some of the residential units was also carried out by Currell Estate Agents (now Savills).
237. The shopping centre manager and the developer's development managers Londonewcastle, and Mr Cornforth directly on behalf of the developer, have also been involved in some of the negotiations. Mr Harley, on behalf of Be First and the Council, has also been involved.
238. There have been numerous points of contact that have changed over the years. Objectors appear to have contacted different people at different times and it could not be said that there has been a specified case manager involved who provided a single point of contact to whom those with concerns about the proposed acquisition could have easy and direct access to.

Keeping any delay to a minimum

239. The scheme has taken an unusually long time to progress. Nearly 7 years in total from the pre-application discussions to the consideration of this CPO at inquiry. Objectors have been living in limbo since 2015, not knowing what would happen, thwarted by the threat of a CPO. The CPO Guidance¹⁰⁸ advises that as a CPO will inevitably lead to a period of uncertainty and anxiety for the owners and occupiers of the affected land, acquiring authorities should consider keeping any delay to a minimum by completing the statutory process as quickly as possible.
240. Whilst the Council's Cabinet resolved to utilise CPO powers in March¹⁰⁹ and July¹¹⁰ 2018, the CPO was only made on 14 June 2021. The AA comments that the 3 years in between Cabinet approval and making the Order were taken up with preparing the site, including land referencing work, negotiations to acquire land by private treaty, amending the Order to ensure no land take from Network Rail and progressing the reserved matters. There was also the matter of drawing up the AGL and DI legal agreements. BE were also acquired by PineBridge during this time.
241. The July 2018 Cabinet Report refers to the intent for construction to start in early 2020, but the AA claim that this was based on conditions being addressed quickly. These were not addressed quickly, and other matters, such as drawing up the legal agreement, took longer than they anticipated. This is said to be due to BE being acquired by PineBridge, which concluded on 31 December 2020. The legal agreements between the developer and the AA were signed in March 2021.

¹⁰⁸ Tier 1, Stage 3, paragraph 19.

¹⁰⁹ CDA.1

¹¹⁰ CDA.2

242. However, negotiations to acquire land by private treaty occur alongside a CPO, and are not a reason to hold it up. The Network Rail objection and resolution occurred after the CPO was made. Only Phase 1 of the reserved matters has been progressed, this is a small part of the site, approved in December 2019. Land referencing work does not take 3 years, even with a pandemic, and I heard evidence from Mr Sahota that very short timescales were given to landowners to provide this information.
243. Mr Cornforth¹¹¹ explained that the delays were to ensure the scheme is viable, waiting for the values in the town centre to increase. It was also reflective of high street changes over the last few years and the pandemic. However, Mr Messenger¹¹² said that the pandemic had not had a material bearing on the progression. Therefore, I can only assume that the delay has been due to viability, and I am unable to conclude that the CPO was progressed as quickly as possible.

Offering to alleviate concerns about future compensation entitlement

244. The financial offer letters¹¹³ show offers were made up of current market value and allowances for other non-market heads of claims the interested parties could be entitled to under the CPO Guidance. However, no evidence is provided that the AA offered owners and occupiers any agreements about the minimum level of compensation which would be payable if the acquisition went ahead, and no objections were withdrawn by any owners/occupiers.

Offering advice and assistance to affected occupiers in respect of their relocation

245. The CPO Guidance¹¹⁴ advises that in order to reach early settlements, public sector organisations should make reasonable initial offers, and be prepared to engage constructively with claimants about relocation issues.
246. The March 2018 Cabinet Report¹¹⁵, which sought approval to use CPO powers set out that “the developer, Be First and the Council will work together on a strategy to support business relocations wherever possible to other town centre locations or other locations within the Borough. It is acknowledged vacancy rates in the Borough are relatively low and that the Council’s own stock of premises is limited”.
247. However, this strategy¹¹⁶ was not produced until earlier this year, being submitted after the inquiry had opened. It has not been published by the AA and the first time objectors would have seen it was when it was submitted as an inquiry document. The strategy does very little to support relocations and was not produced early in the process.
248. It provides contact details for the AA, sets out how to seek business support, offering a free initial advice session with Barking Enterprise Centre, and provides 5 options for relocations. These include contacting local estate agents for vacant properties, using Roycraft House for businesses not reliant on passing trade, businesses becoming street market traders, moving to Dagenham or the possibility of relocating into the CPO Scheme. It gives

¹¹¹ XX by Mr Elvin KC

¹¹² XX by Mr Elvin KC

¹¹³ AA/AS/2g

¹¹⁴ Tier 1, General Overview, Paragraph 3

¹¹⁵ CDA.1

¹¹⁶ INQ3

advice on claiming disturbance compensation and provides some information weblinks.

249. Providing contacts for local estate agents 'passes the buck' and while they may be well placed for knowledge on vacancies, it is the AA who is meant to offer advice and assistance. Roycraft House would not suit many of the existing businesses who occupy buildings in the CPO lands as they rely on passing trade. Suggesting the businesses become market traders is marginally impertinent. Relocation to Dagenham is likely to be unsuitable for many because it is a lower tier shopping centre and less accessible than Barking.
250. The possibility of re-locating into the CPO Scheme is perhaps the most favourable option for many businesses, yet I heard very few businesses¹¹⁷ have been offered this, and none have committed. Aside from Thomas Pharmacy, they are all national traders and not the independent locals most affected. There is also little in place to facilitate this relocation and for some it would simply be impossible, i.e. those affected by the first phase.
251. The Council assert it is doing what it can to support local businesses, and it is looking to offer a bespoke approach, holding a series of drop in sessions where occupiers can discuss their relocation needs nearer to the time. However, very little advice and assistance to affected occupiers in respect of their relocation has been provided to date. Indeed Mr Harley¹¹⁸ details that support available to date has focussed around broader help for the sectors badly hit by the pandemic rather than relocation to those affected by the CPO.
252. Condition 61 of the planning permission¹¹⁹ requires a development implementation strategy which shall include details of any phasing, measures to mitigate the impact of the development on the vitality and viability of Barking Town Centre during the demolition and construction phase including meanwhile uses¹²⁰, and details of consultation undertaken with the local Commissioner for NHS Community Pharmacy Services to confirm any reasonable mitigation measures required to ensure adequate provision of local pharmacy services during construction.
253. The reason for this condition is to ensure that existing businesses are supported in their desire to relocate and to ensure a similar level of function, vitality and viability of the town centre as is currently experienced throughout the construction period of the development. Satisfaction of the condition would help businesses to relocate. Yet, this is a condition of the planning permission and it has not been discharged, and does little to support the AA's claim that it has been offering advice and assistance to affected occupiers in respect of their relocation during the consideration of the CPO.
254. Objectors presented the Shepherds Bush CPO decision¹²¹ as justification for their objections to the lack of relocation support. However, this is very different because there is no policy requirement to preserve existing businesses.

¹¹⁷ 5 in total

¹¹⁸ AA/DH/1

¹¹⁹ CDC.1

¹²⁰ Temporary commercial uses of empty property and land, for example, pop-up cafés or shops.

¹²¹ INQ10

255. It is also very different to the Elephant and Castle Shopping Centre redevelopment¹²², which was presented by the Barking and Dagenham Heritage Conservation Group. This is because the Order Lands do not provide a distinctive shopping destination and area for a particular ethnic group. The Equalities Impact Assessment¹²³ details that the businesses are reflective of other types of business within the town centre and consequently there are no businesses identified as providing a service or range of products specifically serving any protected characteristics group which is not available elsewhere in the town centre.
256. Nevertheless, there are a significant number of businesses, many independent long term traders, that would be affected by the CPO scheme. Whilst the developer states that a key aspect of the tenant mix strategy is to enhance and embrace the opportunity to accommodate independent traders¹²⁴, providing affordable rents, the CPO Scheme will not be able to accommodate all existing businesses.
257. Mr Harley was clear that the Council's ambition is to maximize opportunities for existing businesses to be relocated within the CPO Scheme, town centre or the Borough, and that the relocation support would increase if the CPO were confirmed. Many relocations would not take place until the CPO was confirmed because the AA would want to ensure vitality in the street scene. However, there is little evidence to demonstrate that the AA has been offering advice and assistance to affected occupiers in respect of their relocation during the CPO process.

Providing a 'not before' date

258. There is no evidence that the AA provided a 'not before' date, confirming that acquisition would not take place before a certain time. Quite the opposite, the letters detail different timescales and expectations, the first letter from 2018 suggested construction is planned to start in spring/summer 2019, with this changing over time.
259. Accurate phasing information would have provided many occupiers with certainty, and would have enabled certain objectors, such as Mr Sahota and Mrs Kanda, to proceed with their business plans in the intervening period from 2015 to now. Indeed, for some on Ripple Road, it could be over 4 years before their properties are required based on Mr Cornforth's estimations, yet I have no precise phasing information. This is a poor way to treat those subjected to the CPO.

Funding landowners' reasonable costs of negotiation

260. The AA has offered to pay reasonable costs for each objector to appoint an independent professional to work on their behalf. However, many did not take up this option, with several claiming that the AA were not willing to pay the costs when estimates were provided. The AA deny this claim.
261. 24-34 Station Parade (CPO Plots 2-10) – Mr Ali Kadhodayi-Kholgi, Mrs Jahanpanah, HungerBurger Ltd and personal representatives of Paula Mary Baker (deceased) – the objectors assert that the AA refused to pay their

¹²² INQ31

¹²³ CDA.8

¹²⁴ AA/DK/4

consultants costs, even though they received letters advising them in April 2018¹²⁵ that the developer would pay the reasonable costs of appointing a surveyor. Mr McCafferty, acting for the objectors raised the question of fee repayments in summer 2019.

262. The developer agreed to pay the reasonable fees for Mr McCafferty to assist the owners with negotiations. Mr McCafferty put forward a suggested fee proposal, which the AA considered to be onerous for the initial negotiations. Mr McCafferty is based in Scotland and wanted reimbursement of fees for travelling to London to meet in person as well as up to 20 hours' worth of time. AY offered to pay an initial fee cap of £500 (equal to 3 hours)¹²⁶ to have an initial meeting by conference call in August 2019.
263. AY chased Mr McCafferty several times over the next few months to arrange the meeting. In January 2020, Mr McCafferty explained that Mr Ali would like to meet in person. AY sent a follow up email¹²⁷, confirming that this could be arranged when Mr McCafferty was next in London. This meeting never took place and in February 2020, Mr McCafferty¹²⁸ advised AY to contact Mr Ali directly going forward and provided his phone number. Mr Ali asserts no one called him.
264. Mr Ali wanted to use Mr McCafferty, as he had advised him on Mr Ali's first CPO, when his property was compulsorily acquired to develop VFSC. Yet, the expectation that the AA would pay for travel costs from Scotland is unreasonable and the fee cap of £500 for the initial meeting appears reasonable, given that Mr McCafferty was often in London for other matters. Therefore, the AA's offer to pay the fee for an initial meeting was reasonable.
265. *Mr Sahota and Mrs Kanda (17-19 Ripple Road)* – the objectors refer to the developer refusing to pay reasonable costs associated with a surveyor. The AA strongly refute the accusations and there is evidence in both the objectors' and AA's correspondence that offers were made to pay reasonable fees. Therefore, there is no tangible evidence before me that the AA refused to pay Mr Sahota and Mrs Kanda's surveyor fees.

Conclusion

266. Based on the evidence before me, and having regard to the CPO Guidance, I am not persuaded that the AA has genuinely attempted to negotiate with the affected parties in line with the CPO Guidance in relation to providing full information at the outset, appointing a specified case manager, keeping any delay to a minimum, offering advice and assistance to affected occupiers about relocations and providing a 'not before' date.

Outstanding objections – Freeholders

Objections – 24-34 Station Parade (CPO Plots 2-10) – Mr Ali Kadhodayi-Kholgi, Mrs Jahanpanah, HungerBurger Ltd and personal representatives of Paula Mary Baker (deceased)

267. Evidence was presented by Mr Ali, along with professional witnesses on the topics of planning, negotiations and design. Objections were also raised in

¹²⁵ AA/AS/4 – Appendix 1

¹²⁶ XX – Ms Squires by Mr Elvin KC

¹²⁷ AA/AS/4 – Appendix 2

¹²⁸ INQ18

relation to viability, which I have considered earlier. I have also considered the alternative proposals above and the planning implications of the objections. I will address the outstanding objection to negotiations below.

268. *Negotiations* – negotiations between the objectors and the AA started in 2015, with letters sent in November and December 2015 and June 2016. Letters were also sent in January and April 2018¹²⁹ seeking to acquire Mr and Mrs Ali's interests. No response was received.
269. Mr and Mrs Ali attended the July 2018 Cabinet meeting where the decision to make the CPO was taken. Mr Ali raised his concerns and requested that the Cabinet allowed him to carry out his own redevelopment. This approach was not accepted by the Council who resolved to make the CPO.
270. Mr Ali claims that he spoke to Mr Gooch of GCW following the letter in April 2018. Mr Ali explained that Mr Gooch was only interested in acquiring the properties, and was dismissive about Mr Ali's suggestions of relocation or alignment to the regeneration ambitions, whilst retaining ownership. Mr Gooch was not present at the inquiry and I have only Mr Ali's distressed story to rely upon. However, I have no reason to doubt his recollection.
271. The AA did not receive any contact from or on behalf of the objectors until February 2019, when Andrew McCafferty Associates sent a letter to DP9 (the developer's planning consultants). As the matters of the letter related to negotiations to acquire 3rd party interests, Ms Squires, acting for AY, replied in May 2019, setting out her role in site assembly and offered to meet.
272. Emails were exchanged between Ms Squires, Mr Ali and Mr McCafferty, and attempts to arrange a meeting took place between May 2019 - February 2020. However, as detailed above, no meeting ever occurred.
273. GCW contacted Mr Ali in January 2021 to try to further negotiations. Mr Kite had a phone call with Mr Ali in February 2021 and asked for clarification of the tenancy information within his ownerships on Station Parade. He followed this up with an email¹³⁰ on 12 February 2021. No response was received.
274. Prior to making the CPO in June 2021, as detailed above 2 letters¹³¹ were sent providing an update on the Order, a link to the website, an offer to meet in person or virtually and a reminder that reasonable fees would be paid by the Developer for a surveyor to negotiate. The letter detailed that the developer would continue to negotiate to acquire the interests by private treaty and made financial offers for the various ownerships. Mr Ali claims that the offer was a shameful and inadequate amount, but the AA claim the developer was basing the offer upon very limited information about tenancies and leaseholds. The letter also asked the owners to clarify if any of the tenancy or property information was incorrect so that the developer could potentially make an improved financial offer. No response was received.
275. The developer wrote to all objectors in October 2021, offering to meet. Mr Ali replied to this letter to inform the AA that Mr McCafferty no longer represented him, and he had instructed Mr Lakhani. In the interim, Mr Lewis of Russell Lewis Property Consultants contacted the AA to inform them that

¹²⁹ AA/AS/4 – Appendix 1

¹³⁰ AA/AS/4 – Appendix 3

¹³¹ AA/AS/4 – Appendix 4 and AA/AS/2e

- they were instructed, and asked to meet. Emails were exchanged. Yet after this Mr Ali told the AA that only Mr Lakhani was instructed on his behalf.
276. On the 8 February 2022, the developer met with Mr and Mrs Ali, their 2 sons, Mr Lakhani and Mr Lewis. Despite Mr Ali informing the AA that Mr Lewis was not instructed, he was present at the meeting. However, after the meeting, Mr Ali informed the AA again that Mr Lewis was no longer acting for him and that the AA should not communicate with him.
277. During the meeting¹³², the objections, potential acquisitions, timing and progress of the CPO, the financial offer, excluding Mr and Mrs Ali's interests, the difficulties of relocating Barking Hotel, and the pre-application submission were discussed. Negotiations have continued by email since this meeting on the financial offer. The AA have maintained that they will review the financial offer if further information on the leases and tenancies can be provided.
278. Relocation properties were also looked at by the developer, after 2 sites were suggested by Mr Lewis. A response¹³³ from the AA was sent in March 2020 explaining that they were not able to offer them as suitable relocations as they were both privately owned.
279. The SoO details that the developer has appointed a specialist hotel valuer within AY to review whether a higher financial offer can be made to acquire Mr and Mrs Ali's interests. Representatives from AY were due to meet with Mr Ali and Mr Lakhani on 18 May 2022 to carry out a site inspection, but Mr Ali cancelled the inspection because he was poorly. An inspection was set up for 15 July 2022, but given that the inquiry is closed, I do not know the outcome of this.
280. With regards to Paula Baker/The Personal Representatives of Paula Baker at [REDACTED], a letter was sent in January 2018 and April 2018. A letter from GCW was sent in July 2020, setting out that the developer would like to make a financial offer, but needed tenancy information to make it credible. GCW also sent a follow up letter in September 2020, suggesting a telephone call to discuss the project and CPO process. No response was received to any of these letters.
281. In October 2020, the AA became aware that Paula Baker had died and in April 2021, Mr Shindler of [REDACTED], drove to the registered address of Paula Baker to make contact. Mr Shindler met with family members. He explained the CPO process and scheme and set out that the developer would like to acquire the properties by private treaty, but needed to understand the tenancies. There was limited email correspondence following this meeting and nothing further on the tenancies.
282. GCW also sent an offer letter¹³⁴ to the personal representatives in early June 2021, akin to that sent to Mr and Mrs Ali. Their response to the AA was that they had already been offered significantly more by one of their neighbours and so they were not inclined to take matters further. Mr Kite responded to this information asking for tenancy information and copies of leases/licenses to see if this might enable the Developer to make an improved offer. No reply was received.

¹³² AA/AS/4 – Appendix 6

¹³³ AA/AS/4 – Appendix 7

¹³⁴ AA/AS/4 – Appendix 5

283. The SoO details that the AA have offered to meet with the Personal Representatives of Paula Baker (deceased), but there has been no response.
284. *Conclusion on negotiations* – There have been changes in the objectors’ consultants, and the AA were not always aware who it should be contacting, and if they were representing just Mr and Mrs Ali or additionally the personal representatives, although it became clear at the inquiry that the personal representatives supported Mr and Mrs Ali’s case. On the other hand, there have also been changes to the AA’s contacts over time.
285. The AA has sought to acquire the properties by private treaty, but from first contact in 2015, it took until February 2020 before a meeting took place with Mr and Mrs Ali. This has been similar for the personal representatives, with a meeting taking place in June 2021 and no further contact.
286. However, Mr Ali’s call with Mr Gooch left him sad and disappointed, and his lack of engagement is likely a result of this, along with the negative response to his pre-application proposals, and the knowledge that the LPA then granted a scheme taller than what he had proposed so soon afterwards.
287. There has been an absence of information provided by the objectors to enable the AA to provide a proper valuation. That said, the financial offers proposed are said to be a shameful and inadequate amount and there are also large periods of time where there has been no contact from the AA.
288. The AA has not negotiated frequently with the objectors, and this follows a similar trend to the delays processing the CPO overall. Limited information was provided at the outset, there has been limited consideration of relocation, and the gaps in communication are unlikely to encourage landowners to negotiate.
289. *Other objections* – This is the second CPO that Mr and Mrs Ali have been subjected to. This is truly unfortunate, particularly given that the first CPO was made to facilitate the development of the shopping centre, which is now being demolished to pursue this CPO scheme. It would be unusual to be subjected to one CPO in a lifetime, but to be subjected to 2 is enormously stressful. I have a great deal of empathy for Mr and Mrs Ali.
290. Mr and Mrs Ali were relocated from 44 Station Parade to 24 Station Parade, where they began to rebuild their businesses, expanding their property portfolio and created Barking Hotel, a family run business. The Alis spend long hours working at the hotel, they have a core team of 10 local employees, and Mr Ali considers that the local community knows them as a key cultural and social institution¹³⁵. Mr and Mrs Ali explicitly wish to stay in Barking town centre so that they can continue to operate the hotel business.
291. As well as providing accommodation in the normal sense that a hotel would, Mr and Mrs Ali also provide emergency accommodation¹³⁶ for both homeless people, women and children affected by domestic violence, and those affected by flood, fire or emergency evacuations. They have provided services for the Council in the past, and it is also used by other local authorities and charities. They played an important role during the pandemic, housing key workers. The

¹³⁵ AAKK/1 Paragraph 3.5

¹³⁶ AAKK-10

CPO scheme would not replace this service, and I have addressed this in the Human Rights and Equalities section.

292. The CPO Scheme includes the provision of a hotel, which the objectors claim is not guaranteed to come forward. I agree. There is no requirement within the planning obligation for the hotel to be delivered, and the minimum area in the parameters for this use is 0 sqm, meaning it could be removed from the scheme. Mr Ali has also not been offered the opportunity to relocate his hotel into the new hotel space. Given the lack of alternatives within the town centre for relocation of the Barking Hotel, I am surprised that this has not been considered to ensure that growth is inclusive and no-one is left behind, which the Economic Prospectus¹³⁷ for the Borough encourages. However, if relocation is not possible, Barking Hotel would be forced to close. This would result in the loss of jobs, which is an adverse effect of the CPO.

Objection – 36-38 Station Parade (CPO Plots 11, 12 and 13) – Siraj Deane and Jennifer Beecroft (Post Centre Limited, Deane & Brothers and Acutus Construction Ltd)

293. Mr Deane represented himself at the inquiry and he informed me that his wife runs the Post Centre. I have assessed his proposals for alternative schemes above and considered his objections within other parts of the decision.

Objection – Vicarage Field Health Centre (CPO Plot 22) – National Health Service Property Services

294. The NHS PS presented evidence on planning and negotiations, heritage and design and I have already considered its alternative proposals above. Objections were also raised in relation to viability, which I have considered earlier.

295. The NHS PS's principal argument is that it does not believe that the AA has negotiated reasonably by failing to recognise that the 2 parties could have worked together, offering a fair price for the land and failing to share information in order to understand the land value offered by the AA.

296. Both parties fundamentally disagree with each other's assumptions of the quantum of development and, to a lesser extent, the amount of affordable housing that would be necessary in a 'no scheme principle'. The 'no scheme principle' is the amount which the land might be expected to realise if sold on the open market by a willing seller, disregarding any effect on value of the CPO Scheme.

297. The site is critical to the CPO Scheme, given it provides the main access to the whole site and contains around half a residential tower block and part of the cinema. Although the NHS PS assert that this was not explained until the inquiry, it is clear that the access point for the whole site takes up most of Plot 22. There are no other access options, because access was considered and approved as part of the outline planning application.

298. *Negotiations* – there has been ongoing negotiations since 2016, when I understand that the developer approached the occupiers of the health centre directly.

¹³⁷ CDE.2

299. However, negotiations with professional representatives began with NHS PS in January 2018, when initial contact was made by the developer's agents GCW. AY took over negotiations in September 2018, with a meeting taking place¹³⁸. There have been fits and starts of communication from 2018 until 2022, which is set out between the NHS PS¹³⁹ evidence and that of Ms Squires¹⁴⁰.
300. In December 2018, a meeting took place and email correspondence¹⁴¹ and meeting notes reference a development appraisal for redevelopment of the site for a 20 storey tower with 125 residential units proposed by the NHS PS. AY requested that electronic copies of the development proposals, planning explanation and development appraisal were provided. These were sent by the NHS PS to the AA 3 months¹⁴² later in early March 2019 and detail a 21 storey and a 15 storey scheme.
301. No contact is recorded in evidence until 7 months later in October 2019, when an initial valuation of the land was produced by AY based on its feasibility study¹⁴³, which assumed a 4-6 storey development of 27 residential units and replacement clinic. It was produced by SEW (the CPO scheme designers). The AA have never moved away from this assumption of development.
302. It was asserted by the NHS PS in the last week of the inquiry that there are errors in relation to the calculations of area and capacity in the feasibility study, and this has impacted on the land valuation by the AA. However, the errors relate to land valuation, which is not a matter before me, and in any event, are unlikely to have made a significant difference.
303. The correspondence¹⁴⁴ over October-December 2019 essentially goes in circles. The NHS PS were shocked by the valuation arrived at by the AA and asked the AA to look at land comparable transactions, along with reviewing its assumptions and valuation and present a more appropriate land value. The AA detailed that a discussion on site capacity would be more useful because they considered that the quantum of development would heavily influence the analysis. The NHS PS asked the AA to review land comparable evidence again and review its offer, stating there was no point in meeting until that had been done, and if the AA wanted to meet and progress matters, a 7 figure offer was needed. The AA replied with an increased offer of £800,000. When the non-market value elements of CPO compensation were added, this amounted to a 7 figure sum. The NHS PS disagreed with the sum offered, because it did not refer to any land comparable evidence. A land comparable transaction was provided by the NHS PS for the Thames View Clinic site sold to the AA in 2018. This site was in a lower value and lower density part of the borough and was sold for £1.85m. Despite chasing, no reply was received from the AA.
304. The next bout of correspondence was 3 months later in March 2020 when the NHS PS presented another scheme¹⁴⁵ for 77 homes across 5 to 15 storeys and 221 sqm of office space. This package also included Heads of Terms¹⁴⁶ and a

¹³⁸ AA/AS/9 Appendix 1

¹³⁹ NHSPS-5

¹⁴⁰ AA/AS/9

¹⁴¹ AA/AS/9 Appendix 3

¹⁴² AA/AS/9 Appendix 4

¹⁴³ NHSPS-5 pages 3-16

¹⁴⁴ NHSPS-5 pages 20-38

¹⁴⁵ NHSPS-5 pages 39-57

¹⁴⁶ NHSPS-5 pages 58-68

note on development capacity¹⁴⁷. Significant concerns¹⁴⁸ were raised by the AA, and it put forward a total purchase consideration of £1million, which was explained as £800,000 for the land and £200,000 for the non-market value elements of CPO compensation. No written justification was provided to explain the AA's planning assumptions for its feasibility study, despite repeated requests from NHS PS over several months. Direct contact between employees of the NHS PS and AA took place over June-August 2020, when the AA advised that the NHS PS should submit a CAAD.

305. In October 2020, some 7 months after the NHS PS scheme and 12 months after its own feasibility study, AY produced a planning review briefing note¹⁴⁹ for the site, which repeated much of their prior assumptions that a 4-6 storey building was the maximum possible quantum of development. It also introduced heritage as a consideration, and again suggested that the NHS PS pursue a CAAD. The NHS PS replied with questions, including querying whose planning advice the AA was relying upon, commentary on the land comparable values and the lack of contact¹⁵⁰. The AA explained¹⁵¹ that the note brought together the responses from the developer's planning team to the NHS PS's scheme of March 2020. The AA advised, again, that it would not be beneficial to review land comparable evidence until there was agreement over the quantum of development. The NHS PS¹⁵² then invited the AA to consider if there was an alternative to the compulsory acquisition, including the acquisition of land adjacent to the highway to facilitate access to the scheme. No response was received on this matter.
306. There is then another gap in correspondence for 7 months until May 2021, when the AA¹⁵³ provided an update on the CPO and reiterated its offer of £1 million total consideration to acquire the site. NHS PS¹⁵⁴ responded again with the same concerns relating to the lack of planning advice for the AA's assumptions, alternative acquisition of land, and why the land is required.
307. A meeting took place in June 2021, after the CPO had been made, and the AA increased its total consideration to £1.1 million¹⁵⁵. The reply from the NHS PS¹⁵⁶ set out the offer represented a significant under valuation, highlighted its concerns over sporadic correspondence in the past 2 years, along with many other issues. The NHS PS requested the AA to agree with its site valuation of £2-2.5 million.
308. At the end of August 2021, following chase up emails from the NHS PS, the AA explained that the site was necessary to deliver the full benefits of the CPO Scheme, and that alternatives have been properly considered, but the CPO Scheme was the most appropriate to ensure the regeneration benefits were delivered. The £1.1 million offer remained the same.

¹⁴⁷ NHSPS-5 pages 69-74

¹⁴⁸ NHSPS-5 pages 75-76 and AA/AS/9 Appendix 6

¹⁴⁹ NHSPS-5 pages 88-91

¹⁵⁰ NHSPS-5 page 92

¹⁵¹ NHSPS-5 page 97

¹⁵² NHSPS-5 pages 98-100

¹⁵³ NHSPS-5 page 101

¹⁵⁴ NHSPS-5 pages 102-103

¹⁵⁵ NHSPS-5 page 116

¹⁵⁶ NHSPS-5 pages 119-120

309. The NHS PS replied¹⁵⁷ in September 2021 outlining several issues and objections, much of which had already been mentioned in earlier correspondence. During September, Mr Harley on behalf of Be First provided the NHS PS with Council land sale transactions¹⁵⁸. In November 2021, the NHS PS presented comparable land values and asked the AA to review, along with another set of Heads of Terms for the land sale¹⁵⁹.
310. In December 2021, the AA provided a response that the comparable land values did not support the NHS PS's assumption of a higher land value¹⁶⁰ and asked a question about Wakering Road. No response is said to have been received from the NHS PS.
311. The reply¹⁶¹ to the AA from NHS PS sets out that it had proposed a market value based on land comparable evidence, and whilst the AA disagreed, they had provided no counter evidence. The NHS PS also detailed that both parties had discussed seeking a potential third party opinion (i.e. to act as an independent broker between the 2 parties) to try to reach a position where they could agree density and height. No response is made to this point, with the AA's reply¹⁶² setting out that the key issue remaining was the quantum of development in a 'no scheme principle' to inform the valuation of the site, but they were looking to make a higher financial offer. This was chased up¹⁶³ 4 times by the NHS PS in January 2022, and a revised offer¹⁶⁴ of £1.2 million was made by the AA in February 2022.
312. NHS PS replied¹⁶⁵ in March 2022, setting out that the offer was made up of £800,000 for the land and £400,000 for additional costs. The NHS PS could not transact for anything less than market value due its Health Building Note 00-08 Estate Code¹⁶⁶, which they considered to be £2-2.5 million. The NHS PS asserted that the AA had produced no compelling comparable evidence to underpin the value, despite the NHS PS presenting evidence of comparable land sales. The AA replied that the parties had very different views of value¹⁶⁷.
313. In the SoO, it sets out that following the cross examination of Ms Squires, where the sharing of comparable land transactions was discussed, she sent a copy of the AA's comparables to the NHS PS. I will discuss this below.
314. Similar to other objectors, the correspondence has been patchy and sporadic from the AA, with large gaps between communication and numerous chase up requests from the NHS PS. There have been delays and periods where no communication between parties has taken place, and there is a notable absence of reply to the request for the planning advice that underpins the AA's assumption of the quantum of development.
315. Certificate of Appropriate Alternative Development – All alternative schemes have not been pursued by the NHS PS to a pre-application discussion or submitted a planning application. The NHS PS has also chosen not to submit a

¹⁵⁷ NHSPS-5 pages 128-129

¹⁵⁸ NHSPS-5 pages 131-142

¹⁵⁹ NHSPS-5 pages 144-156

¹⁶⁰ NHSPS-5 page 161

¹⁶¹ NHSPS-5 page 163

¹⁶² NHSPS-5 page 164

¹⁶³ NHSPS-5 pages 165-170

¹⁶⁴ NHSPS-5 page 171

¹⁶⁵ NHSPS-5 page 173

¹⁶⁶ NHSPS-2

¹⁶⁷ NHSPS-5 page 174

CAAD to the LPA, despite stating that it would be pursuing this¹⁶⁸ in September 2021. The CPO Guidance sets out that it is appropriate to apply for a CAAD if the amount of development which would be allowed is uncertain. It seems to me to be an entirely appropriate approach in this instance.

316. The NHS PS explained that because the developer concluded that only 4-6 storeys would be acceptable, and they are working closely with the LPA, it had no confidence that any other conclusion would be reached if it applied for a CAAD. An appeal to the Upper Tribunal (Lands Chamber) would take a significant amount of time, incapable of being resolved prior to this decision being made. Therefore, it could have put them in a worse position, with a CAAD that likely agreed with the AA's assumptions.
317. I sympathise with the NHS PS's reluctance to apply for a CAAD. The consultants acting on behalf of the AA have been resolute in their opinion of the quantum of development, and I am unsure that a CAAD application would have reached a different conclusion. This is also somewhat substantiated by Mr Harley's reply¹⁶⁹ to Mr Hotson which set out that there was a difference on the quantum of development.
318. Furthermore, the right of appeal takes time. The AA presented examples of CAAD timescales¹⁷⁰ and these showed that it took between 14 and 24 months from submission of the CAAD to a tribunal decision. The indication that the NHS PS was going to apply was mooted in September 2021, and it is very unlikely that a decision from the Lands Chamber would have been issued before the inquiry.
319. I accept that the AA¹⁷¹ suggested in August 2020 that the NHS PS should submit a CAAD if it did not agree with the assumptions over the quantum of development. However, the NHS PS¹⁷² detailed that it would be an inappropriate use of its resources, because despite asking, the NHS PS had still not seen the planning advice to explain the AA's position on the quantum of development, and without this it would begin the application process at a disadvantage.
320. The pursuit of a CAAD may have helped if it had been submitted earlier in the process, but I understand why the NHS PS chose not to submit one.
321. *Differences on quantum of development* – the AA has never provided written evidence of its planning assumptions for the quantum of development on the site. It states that they were arrived at through discussions with the developer's planning consultants, DP9, and whilst there is no record of DP9 providing planning advice to AY, under cross examination, Mr Messenger confirmed that his views were contained in the AY note¹⁷³. Nevertheless, it is unusual that there is no written record of this advice, particularly considering that a feasibility study was developed on the back of it.
322. The alternative proposals put forward by the NHS PS all assume taller development than the AA assumes in a 'no scheme principle'. Whilst the planning policies promote densification and taller buildings in town centres,

¹⁶⁸ NHSPS-5 page 128

¹⁶⁹ NHSPS-5 page 79-80

¹⁷⁰ INQ46a

¹⁷¹ NHSPS-5 page 83

¹⁷² NHSPS-5 page 99

¹⁷³ NHSPS-5 pages 88-91

this site is located off the main throughfare and behind a terrace row of 2 storey 1930's properties, opposite a listed building in a conservation area. Taller buildings on the site could appear incongruous set in this back land location, and consideration of any heritage balance, including loss of the London Plane tree could be different than that for the whole CPO Scheme. It may also impact upon the living conditions of the occupiers of the residential flats on Ripple Road.

323. Notwithstanding, I am apprehensive whether the AA's asserted maximum height of 4-6 storeys would be entirely valid. This apprehension is borne out of the proliferation of taller buildings across Barking town centre adjacent to conservation areas and heritage assets and the fact that the residential tower proposed to occupy around half the NHS PS's site in the CPO Scheme has an indicative stepped height of up to 19 storeys. The AA's feasibility study also retained the replacement clinic, despite it being surplus to requirements.
324. However, in any event, it is not my place to determine the quantum of development that could be delivered on site. The place to resolve this dispute is through a CAAD or the Upper Tribunal (Lands Chamber).
325. Comparable land transactions - The AA's evidence submitted during the inquiry contained several errors, relied on sites where no transaction had taken place and included sites not used or proposed for residential development. The NHS PS highlighted these and made corrections in its evidence, and I sympathise with the NHS PS's frustrations. The AA should have presented accurate information and I do not agree that this is a normal part of the process as promoted by Ms Blackman.
326. The NHS PS's strong views are that comparable land transactions are at the heart of real estate valuation and are the best way to achieve a land valuation. I disagree. This is because there is an exception to the use of comparable land transactions as the best way to achieve a land valuation, and this is when valuing 'real estate with development potential'. This is supported by RICS guidance¹⁷⁴, which states when valuing real estate with development potential, "the value of a development site is particularly sensitive to small changes in valuation inputs such as the amount and density (my emphasis) of the permitted development, the assumed value of the completed development, ground conditions, development costs and allowance for risk. Straightforward comparison on a price per unit area of the site is therefore often not valid (my emphasis). Comparison on a price per buildable area basis may be possible but a more detailed analysis is often required, usually involving residual valuation or cashflow techniques". Appendix B: Factors affecting value and comparability by sector also sets out that for property with development potential, a "direct comparison between sites on a rate per unit area basis will only be possible if all [these] key factors align. If not, individual comparable elements will need to be incorporated into a residual or cash-flow valuation."
327. It refers the reader to the RICS Guidance on the Valuation of development property 1st edition, October 2019¹⁷⁵, which details that "an accurate assessment should be made of the form and extent of physical development that can be accommodated on the site (my emphasis). This assessment

¹⁷⁴ INQ34c - RICS guidance note Comparable evidence in property valuation (1st edition) October 2019

¹⁷⁵ INQ33a Appendix A

should consider the characteristics of the site and the surrounding area, supply and demand constraints and the likelihood of obtaining permission. In more complex cases, it is recommended that this assessment be undertaken in consultation with appointed project advisers, such as architects, quantity surveyors and environmental, planning and energy consultants.”

328. Furthermore, Mr Williams conceded¹⁷⁶ that the NHS PS has advanced its own valuations based on residual appraisals with comparables as a sense check. This is the same approach that the AA is said to have carried out.
329. Therefore, the price paid per hectare/acre of land is incomparable when considering different scheme densities, such as CPO Plot 22. It is a crude measurement of value and I understand the AA’s reluctance to use comparable land valuations until the quantum of development conflict was resolved. Once common ground was reached, comparables could be used to sense check. This is a reasonable approach and the AA did not fail to negotiate by not providing its comparable land transactions.
330. Nevertheless, if considering comparables, a more reasonable comparison would be to look at the price per unit (ppu) achieved in other land comparable transactions, given the driver of value would be the residential sales. It is featured in the comparable evidence provided by both parties, and whilst corrections to the AA’s evidence were necessary, it provides a ‘yardstick’ against which one can compare sites without considering density or the development potential. It was also used by the NHS PS¹⁷⁷.
331. On the AA’s comparable evidence of town centre sites, Barking 360 and Barking Wharf (with the corrections on ppu provided by the NHS PS for Barking 360), the ppu is on average around £34,400. On the NHS PS’s comparable evidence, which includes all sites in the town centre, the ppu is around £34,600. There is about £200 per unit difference. This is extremely marginal and proves that the fundamental difference is the assumptions about the density and quantum of development.
332. Furthermore, as a specific example, the land transaction for Thames View, which the NHS PS sold to the AA in 2018 for £1.85 million has repeatedly cropped up throughout correspondence. Evidence details the site had planning permission for community use at ground floor and 54 flats above¹⁷⁸ at the time of the sale. There have been new planning permissions, but the ppu at the time of the sale was around £34,000. Whilst the NHS PS claim this should validate a higher value for CPO Plot 22, as it is outside the town centre, the ppu is only marginally lower than its own town centre comparables.
333. Therefore, the sharing of the comparable evidence wholly demonstrates that the disagreement between land value directly relates to the quantum of development at the site.
334. Conclusion –The AA has stuck to its position on the quantum and scale of development on site. Whilst it says it has reviewed it, it still considers this to be a true representation of what could be built on the site in a ‘no scheme principle’. This is its professional opinion and it attempted to negotiate, albeit with irregular communication, on that basis.

¹⁷⁶ XX by Mr Pereira KC

¹⁷⁷ NHPS-10

¹⁷⁸ INQ34 Table 7.2

335. Furthermore, the NHS PS has not sought to secure valuation advice from another suitably qualified valuer, as required in its Estate Code¹⁷⁹, and its own assumptions on value could be incorrect. Also, whilst the NHS PS assert that the AA did not consider joint working, the AA is required to negotiate to acquire the land.
336. Fundamentally, the dispute on the quantum and scale of development that could be achieved at the site in a 'no scheme principle' remains. Sharing the comparable evidence earlier would have made little difference. No resolution is likely to be reached given both parties' stance, and for this reason, the CPO is a last resort. These matters of dispute are for debate in the Upper Tribunal (Lands Chamber) and not for me to determine. The same goes for the NHS PS's threat of a ransom strip.

Objection – 17-19 Ripple Road (CPO Plots 27, 28 and 29) – Amerdeep Sahota and Reena Kanda (Ambareen Estates Ltd, Ambareen Limited trading as Thomas Pharmacy and Ambareen Estates Limited & Ambareen Construction)

337. This objection relates to the freehold of [REDACTED], owned by Mr Amerdeep Sahota and his wife Mrs Reena Kanda. They own the freehold under the following companies outlined above and run Thomas Pharmacy. They both presented evidence at the inquiry.
338. Thomas Pharmacy delivers a community wellbeing hub, providing services that go above and beyond a regular dispensing pharmacy, and deliver a wide variety of clinical services, such as smoking cessation, HIV testing, STI screening and sexual health services. They deliberately employ staff members who speak foreign languages to be accessible for all members of this diverse community and "are the pharmacy of choice for residents of the borough but also healthcare practitioners due to their tenacity and dedication to tackling health inequalities"¹⁸⁰. They have been recognised nationally for the services they provide. Their key issue is to maintain continuity of trade for the pharmacy and be relocated in a similar position on Ripple Road.
339. Furthermore, the objectors bought [REDACTED] with the intention to create a wellbeing centre and enhance their residential offer. They have been unable to pursue these plans because of the uncertainty of the CPO and any timings associated with it, the lack of phasing information and a 'not before' date. This has unreasonably thwarted their business plans and caused long term stress to the objectors and their family.
340. *Negotiations* – the objectors state that the negotiations have not been meaningful. Financial offers to acquire their property were made in 2015 and again in 2021. Mr Sahota and Mrs Kanda had a meeting in September 2015 with Savills and Mr Cornforth. They detail that Mr Cornforth was only interested in property acquisition, and that if they didn't trade BE had ties to their mortgage provider and would use the CPO as developer's tools to get what they wanted. Whilst Mr Cornforth strongly refutes this assertion, the objectors were left feeling intimidated and threatened.
341. Between December 2015 and February 2016, various financial offers were made and rejected by the objectors. They say they were way below market value, and they had made clear that relocation of the pharmacy must be a

¹⁷⁹ NHSPS-2 – 4.128

¹⁸⁰ ASTP/1b

- part of the offers. They instructed Christie & Co to act on behalf of them, but when their fees were outlined to Savills, they claim no response was received. In January 2017, the objectors say they instructed DWD, who attempted to contact representatives from the AA, but gave up in March 2017 following a failure to contact anyone.
342. In June 2017, Mr Gooch from GCW met with the objectors. They discussed relocation within the CPO Scheme, and were told it was not possible. They outlined that they wanted to relocate sooner as they wanted to expand the pharmacy with the wellbeing centre. GCW advised they would speak to Mr Cornforth, but nothing came of this, despite chase up emails from Mr Sahota. There are other accusations about the conduct of Mr Gooch at the meeting¹⁸¹.
343. The standard letter was sent in January 2018¹⁸² by the AA and in April 2018, land referencing was requested by Londonewcastle. This was sent to the objectors and Mr Gurney of Handelsbanken, with a 2 week deadline to reply. They tried to contact Londonewcastle numerous times to explain it was unrealistic to expect a response, but at considerable expense and stress, met the deadline. Mr Gooch from GCW then contacted the objector's bank. This was said to be in response to the messages left at Londonewcastle¹⁸³. However, from the email¹⁸⁴ I have seen, the call was unsolicited and out of the blue and Mr Gooch appeared to suggest that Mr Sahota was not maintaining a dialogue, when in fact he was waiting for a response on relocations from June 2017. The tone and method of this communication was unnecessary, and it was distressing for the objectors.
344. In July 2018, Mr Sahota and Mrs Kanda met with Mr Harley of Be First. He explained the CPO process, what happens once Cabinet approve the use of compulsory purchase powers, and explained the roles and relationships of the various parties involved on behalf of the Council and the Developer. He also explained the decision making process and that Mr Sahota had the opportunity to attend Cabinet to speak. Mr Sahota subsequently attended and spoke at the Cabinet meeting against the making of the Order. Mr Sahota's account of the meeting with Mr Harley is different, stating that Mr Harley confirmed there was no commercial units available for relocation and he left feeling like the meeting was simply 'lip service'.
345. There was no communication about the CPO or acquisition until December 2020¹⁸⁵, a period of 17 months, when Mr Kite (GCW) offered to meet following Mr Gooch's retirement. Mr Sahota agreed to meet on the condition that it would be a meaningful meeting and Mr Kite provided an agenda, that included relocation of the pharmacy into Phase 1. I assume no meeting took place, but it was confirmed at the inquiry and in evidence that the relocation of the pharmacy into Phase 1 would be 'commercial suicide' because they would be directly amongst competitors. Furthermore, the Mr Sahota and Mrs Kanda need their pharmacy to be relocated in a similar position to where it is now due to license constraints.

¹⁸¹ ASTP/1j

¹⁸² AA/AS/2d

¹⁸³ AA/AS/6 Appendix 3

¹⁸⁴ ASTP/1k page 25

¹⁸⁵ ASTP/1k page 44

346. Financial offers were made by letter¹⁸⁶ in June 2021, 10 days before the CPO was made, along with the Council's letter¹⁸⁷ being sent on the same day. The offers were said to be lower than the original offers in 2015, 'laughable' and 'absurd', and left the objectors feeling misled. At no point were the objectors asked for a valuation of the business, or comparable of other property in the immediate vicinity, to form an accurate picture of the financial offer. There are also email exchanges with Mr Harley seeking information about phasing and leases in June 2021.
347. Standard letters were sent to all CPO objectors in October 2021¹⁸⁸, offering to meet, and the next set of correspondence was in January 2022, with a letter¹⁸⁹ sent from AY offering a meeting, which took place in February 2022. Mr Sahota and Mrs Kanda were informed that the developers were willing to relocate the pharmacy into Block C, which is where they wanted to be relocated, because this would be a similar position to their existing site on Ripple Road. However, there would be no swap out of their residential units and a 25 year lease at market rate would be offered for the relocated pharmacy.
348. Further communication between the parties was ongoing up to the inquiry, and indeed at the pre-inquiry meeting, I was advised that the objection was likely to be withdrawn as a relocation package was being drawn up. The developer sent across a headline proposal in March 2022. Emails have been exchanged and another meeting took place in April with the objector's representatives. The AA are waiting on a response from Mr Sahota about their size requirements, but the objectors confirmed on 4 May 2022 that they were putting correspondence on hold during the inquiry.
349. Mr Sahota and Mrs Kanda have been forthcoming in negotiations and attempted to engage. However, despite the developer saying they are willing to work with them to facilitate this, nothing has been agreed in writing regarding phasing, timing, relocation, or even temporary relocation solutions. I do not understand why an agreement had not been reached before the inquiry.

Objection – 13-15 Ripple Road (CPO Plot 30) – Samriti Marwaha

350. This objection relates to the freehold of 13-15 Ripple Road, owned by Mrs Marwaha who was represented by her son and a planning witness at the inquiry. Mrs Marwaha rents out the building in various forms for residential and commercial tenants. There are 7 flats and a double fronted commercial unit occupied by a budget retail store. They have happy tenants and believe she has been a good landlord. She thinks the development should be confined to the shopping centre only and [REDACTED] is well suited to local independent traders. I have addressed the objections above within the scope of other parts of the decision.

Other objections

351. In addition to the concerns raised by freehold objectors, other objections have also been raised by leaseholders, tenants and occupiers, along with objections

¹⁸⁶ ASTP/1k pages 48-49, 51-52

¹⁸⁷ ASTP/1k pages 55-56

¹⁸⁸ AA/AS/6 Appendix 6

¹⁸⁹ AA/AS/2h

from properties where rights are to be acquired, and other non-statutory objections. I have already considered many of the concerns raised in the main body of the decision, however, other matters are dealt with below.

Concerns on loss of business due to construction work including crane oversailing and general construction impact¹⁹⁰

352. Evaluation of demolition/construction phase noise and vibration were provided as part of the outline planning application. The planning conditions include a requirement for a Construction Environmental Management Plan (to ensure that the proposed demolition and construction work does not cause nuisance and disturbance to neighbouring occupiers) and a Construction Logistics Plan. The latter is designed to minimise the impact of construction on the free flow of traffic on the local highway network. Demolition and construction work and associated activities are also to be carried out in accordance with the recommendations contained within British Standard 5228:2009, "Code of practice for noise and vibration control on construction and open sites".
353. In relation to crane oversailing, rights are only being sought for the ability to enter airspace with a jib of a crane. The crane itself would be positioned within the site and the use of the crane will not impact on the businesses over which any crane over sails. There would be no need for business closures even temporarily.

Rights of light¹⁹¹

354. The AA detail that the Environmental Statement that accompanied the planning application assessed the potential likely significant effects of the maximum parameter development as a worst-case in terms of daylight and sunlight amenity to the residential properties which surround the site, overshadowing to amenity areas and open space around the site.
355. It concluded that the maximum parameter scheme would have a negligible to moderate adverse impact on daylight and a negligible to minor adverse impact on sunlight to some existing adjacent residents. However, to optimise the development of the site in accordance with the planning policy, the Scheme will inevitably have consequences in terms of the daylight and sunlight potential of surrounding premises. In practice the maximum parameter scheme could not be fully built out, as it would fail to satisfy the requirements of the Design Code.
356. A detailed sunlight/daylight report would accompany each reserved matters application and to the extent that there is interference with legal easements comprising rights of light, there would be an entitlement to seek compensation for injurious affection.

Loss of home¹⁹²

357. The CPO scheme will require residential relocations, but the residential occupiers affected rent their homes in the private market and their relationship is with their landlord. There are alternative housing options within

¹⁹⁰ Objection made by: Superdrug, Gold Coin Accountants, Mohammad Imran Hossain Mazumder & Kamruzzaman Shakil (Radial House); K Shakil Accountants; Briton College Limited; Mortgage Pioneers Ltd

¹⁹¹ Objection made by: Savers, Awais Iqbal, Mr Mohammed Iqbal, Mrs Balkees Akhter Iqbal; Mr Furkhan Iqba

¹⁹² Objection made by: Abdul Ahad & Seleha Sumi; Sohel Chowdury & Rubina Chowdury Salah Bhuiyan and Yaquter Nessa Sweetey; Santa Miza & Shamsun Nahar Shemu; Nabaz Jamal Omar and Samriti Marwaha

Barking town centre and the Scheme would deliver new homes including affordable dwellings. This would justify the displacement of these residents.

358. Furthermore, the Council are actively building their own affordable homes, and Barking and Dagenham Reside manage the letting process for all affordable rented homes built by/for the Council. There are several existing schemes in Barking town centre and the Borough with a significant number of new schemes becoming available over the next 6 months.

*Compensation*¹⁹³

359. The amount of compensation that should be payable, if not agreed, is a matter for the Upper Tribunal (Lands Chamber).

HUMAN RIGHTS AND EQUALITIES

360. Article 1 of the First Protocol to the Convention, as incorporated by the Human Rights Act 1998 and, in the case of the dwellings, Article 8 of the Convention apply in the consideration of this CPO. The CPO Guidance¹⁹⁴ sets out when confirming an order, authorising authorities should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected. As addressed above, there is a compelling case in the public interest for acquisition of the properties subject to the CPO. The comprehensive benefits of the CPO Scheme could not be achieved without acquisition of the land and interfering with the individual's rights.

361. Therefore, given the significant public benefits that would be provided, this represents a compelling case to justify interfering with Article 1 of the First Protocol to the Convention, as incorporated by the Human Rights Act 1998 and, Article 8 of the Convention.

Public Sector Equality Duty

362. I am also bound by the Public Sector Equality Duty (PSED) set out in s149 of the Equality Act 2010, and as a public authority I must comply with the PSED. It is my duty personally to have due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

363. The AA has carried out an Equalities Impact Assessment¹⁹⁵ (EIA) in June 2021, and previous assessments have been undertaken as part of setting the planning policy framework for the Borough. The planning application for the development also assessed any impact on equalities and social cohesion. The conclusion reached was that the impact was neutral.

¹⁹³ Objection made by: Mr Mohammed Iqbal, Mrs Balkees Akhter Iqbal and Mr Furkhan Iqbal; Sports Bookmakers Limited trading as Coral and Done Brothers (Cash Betting) Limited trading as Betfred Limited

¹⁹⁴ Tier 1, Stage 1, Paragraph 2

¹⁹⁵ CDA.8

364. The EIA concludes that the CPO scheme is aligned with all relevant planning policies. The long term benefits of the proposal would result in employment, housing, primary school places and health facilities, all of which are of major benefit to the area. The assessment identifies some mitigation measures would be necessary to signpost alternative facilities elsewhere while the public toilets are temporarily closed for the works. Be First are looking to provide a new postal centre elsewhere in the town centre, and the closure of St Awdry's Walk is mitigated by a temporary route during construction and the proposed new footpaths through the site, which would be accessible for all.
365. In terms of the businesses affected by the Order, the businesses are reflective of other types of business within the town centre and therefore there are no businesses identified as providing a service or range of products specifically serving any protected characteristics group which is not available elsewhere in the town centre.
366. However, there could be an adverse effect upon people who are temporarily accommodated at Barking Hotel for emergency reasons as they may have protected characteristics. Yet, any local authorities, whether this be the London Borough of Barking and Dagenham, or surrounding ones, are responsible to provide assistance as and when the need arises. The removal of Barking Hotel as a possible accommodation solution would not affect those local authorities' responsibilities for discharging their statutory duties at another location. Furthermore, the scheme's positive effects upon the social wellbeing of the area are compelling, and in favour of confirming the CPO.
367. Thus, having due regard to the 3 requirements above, I conclude that the CPO would have a neutral effect.

CONCLUSION

368. The scheme underpinning the CPO is wholly in accordance with the development plan and has the benefit of outline planning permission. There is an extremely compelling case in the public interest for the development, in meeting economic, environmental and social needs. This would considerably outweigh the heritage harm and loss of existing jobs.
369. The shopping centre and town centre overall needs redevelopment, it is the lowest ranking Borough in London for poverty, and this scheme is the catalyst that would spark further regeneration. There are also no realistic alternative proposals that would achieve the purpose for which the AA is proposing to acquire the land.
370. I am completely aware that failure to confirm the CPO would have an adverse consequence of losing the opportunity to comprehensively redevelop the site at this time. The Council has staked its reputation on the delivery of the scheme and its delivery is critical to achieve its ambitions.
371. I fully recognise much of the potential financial viability of the scheme is reliant upon the scheme itself and it is a complete 'catch 22' situation. The developer is confident the Scheme will be delivered. The funding intentions are clear, and I have no doubt that the developer has access to funds.
372. Nevertheless, there is fundamental lack of tangible and substantive evidence on viability. Given the gravity of the 2016 appraisal, and the lack of an updated appraisal, I cannot be certain that the scheme is financially viable

despite all assurances from the AA. Other methods to present the evidence confidentially could have been explored and, if the scheme was viable, I do not understand why this evidence was not presented. Whilst the AA claims viability evidence from objectors has not been presented, it is for the AA to demonstrate substantive information as to the financial viability of the scheme. It has not done so in a way that convinces me.

373. Consequently, because I cannot conclude that the scheme is financially viable, I cannot be confident that there is a reasonable prospect that the scheme will proceed at this time, or that the necessary resources are likely to be made available within a reasonable time scale. This is because there is an expectation of return, and no developer or investor would pursue a scheme that is not economically viable or feasible. This is even if it has access to funds, sees a long term vision, or pools funds so that one scheme may perform better than another. The legal agreements also provide me with little comfort of delivery, despite the depreciating value of the lease.
374. This makes it difficult to show conclusively that the compulsory acquisition of the land included in the order is justified in the public interest at this time, as detailed by CPO Guidance¹⁹⁶.
375. Added to this are my concerns that inadequate negotiations have taken place, when considering the CPO Guidance. It could not be said that delays have been kept to a minimum. The lag from Cabinet approving the making of the CPO to making the CPO was 3 years. There has been a significant delay in the submission of reserved matters applications, and the outline permission expires in April 2023.
376. The efforts to acquire the CPO lands by private treaty have also been largely ineffective. Claims are made by objectors that the financial offers have not been market value, and it is the shopping centre that has failed, not the surrounding businesses on Ripple Road and Station Parade. There have also been limited efforts to relocate those affected by the CPO to date. A 'not before' date has been absent and this has resulted in those subjected to the CPO unable to fulfil business plans, living in limbo for a long period of time. Full information was also not provided at the outset and there was no clearly specified case manager.
377. Consequently, whilst I acknowledge the pressing need for redevelopment and the extremely compelling case for the CPO, for the above reasons, I cannot confirm that the compulsory acquisition of the land included in this Order is proportionate or justified in the public interest.
378. Thus, the London Borough of Barking and Dagenham Council (Vicarage Field and surrounding land Compulsory Purchase Order) 2021 is not confirmed.

Katie McDonald

INSPECTOR

¹⁹⁶ Tier 1, Stage 2, Paragraph 13

APPEARANCES

For the acquiring authority:	
James Pereira KC and Caroline Daly, of Counsel	Instructed by Vicky Fowler, Gowling WLG (UK) LLP, on behalf of The London Borough of Barking and Dagenham Council
They called	
David Harley CTP MRTPI BA(Hons) MA	Head of Regeneration, Be First
David West BA(Hons) MTP MAUD	Director, Studio Egret West
Don Messenger BA(Hons) MSc MRTPI	Director, DP9
Stuart Davies BSc(Hons) MCIHT	Director, TTP Consulting
Alison Squires BA(Hons) MSc MA MRICS MRTPI	Director, Avison Young
Peter Cornforth MRICS BSc	Director, PineBridge Benson Elliot
Virginia Blackman BSc (Hons) MRICS APC	Principal, Avison Young
For the NHS Property Services (CPO Plot 22):	
Christopher Young KC	Instructed by NHS Property Services
He called	
Professor Ian Ritchie CBE RA Dip (Dist) PCL ARB RIBA MIASBE FRSA FSFE FSHARE Hon FRAM Hon MCSA Hon MSC Pdim Hon D Litt	Director, Ritchie Studio
Ignus Froneman B.Arch. Stud ACIFA IHBC	Director, Cogent Heritage
Paul Burley MRTPI	Partner, Montagu Evans LLP
Howard Williams MA MRICS	Partner, Montagu Evans LLP
For 24-34 Station Parade (CPO Plots 2-10):	
David Elvin KC	Instructed by Paul Burley, Montagu Evans on behalf of Ali Asghar Kadkhodayi-Kholghi and Parisa Jahanpanah (freehold owners 24, 26 28 and 34 Station Parade) and the personal representatives of Paula Mary Baker (deceased) (freehold owners of 30 and 32 Station Parade)
He called	
Professor Ian Ritchie	Director, Ritchie Studio

	CBE RA Dip (Dist) PCL ARB RIBA MIASBE FRSA FSFE FSHARE Hon FRAM Hon MCSA Hon MSC Pdim Hon D Litt	
	Paul Burley MRTPI	Partner, Montagu Evans LLP
	Ali Asghar Kadkhodayi- Kholghi (Barking Hotel)	Freehold owner
For 13-15 Ripple Road (CPO Plot 30):		
	Richard Moules, of Counsel	Instructed by Richard Farr, Sanderson Weatherall LLP on behalf of Samriti Marwaha (freehold owner)
	He called	
	Adam Pyrke MRTPI	Director, Planning RPS
	Matesh Marwaha	Son of Samriti Marwaha
For 17, 17A, 17B and 19, 19A, 19B Ripple Road (CPO Plots 27,28 and 29):		
	Paul Burley	
	He called	
	Amerdeep Sahota	Freehold owner
	Reena Kanda	Freehold owner
For 32 Station Parade (CPO Plot 7):		
	Muzaffar Ali Shah (Barking Traders Ltd)	Leaseholder
	Wahed Khan Mohammed (Click Dot Sales)	Sub-lessee of Mr Shah
	Muhammad Taqi (3T Travel & Tourism Ltd)	Sub-lessee of Mr Shah
For 34 Station Parade (CPO Plot 10):		
	Hamid Riazi Pachinari (HMD Unisex Hair and Beauty Salon)	Leaseholder
For 34B Station Parade (CPO Plot 10):		
	Alireza Hamidein (Port of Knowledge Ltd)	Tenant
For 36-38 Station Parade (CPO Plots 11 and 12):		
	Siraj Deane	Freehold owner
	Zahoor Ahmad, supported by Ms Kumuyi (Al-Madina Hajj and Umrah Services)	Leaseholder
For the Barking and Dagenham Heritage Conservation Group		
	Paul Scott	Chair

INQUIRY DOCUMENTS *(submitted during the inquiry)*

INQ1	Opening Statement on behalf of the Acquiring Authority, 20 April 2022
INQ2	Slide Presentation, 20 April 2022
INQ3	Vicarage Field Business Relocation Strategy. Submitted 20 April 2022.
INQ4	London Borough of Barking and Dagenham (Vicarage Field and surrounding land) Compulsory Purchase Order 2021 (the "Order" and "Order Schedule") Word version of the CPO with modifications. Submitted 21 April 2022.
INQ5	Plans Pack (CDH.1) Corrected version submitted 21 April 2022
INQ6	Site Visit Itinerary. Submitted 21 April 2022.
INQ7	Opening Statement on behalf of NHS Property Services, 22 April 2022
INQ8	Note on s.106 Agreement provisions re Private for Sale Marketing Strategy purpose built private sector rental units. Submitted 22 April 2022.
INQ9	Plans and Drawings Errata, submitted 25 April 2022
INQ10	Shepherds Bush Market CPO and Court of Appeal Judgment, submitted 25 April 2022 on behalf of 24-34 Station Parade
INQ11	Petition submitted 25 April 2022, on behalf of Barking and Dagenham Heritage Conservation Group
INQ12	The Acquiring Authority's response note to Mrs Marwaha's evidence in relation to 13-15 Ripple Road, submitted 26 April 2022
INQ13	Mr Davies's response to part of the evidence of Mr Dimbylow in relation to 13-15 Ripple Road, submitted 26 April 2022
INQ14.1	Collaboration Agreement between the freeholders of 24-34 Station Parade, submitted 27 April 2022
INQ14.2	Funding Letters / Bank Letters of Intent, submitted 27 April 2022
INQ14.3	Evidence that LBBDD are still using Barking Hotel for emergency temporary accommodation, submitted 27 April 2022
INQ14.4a	Ms Squires' Summary Meeting Notes, 8 February 2022 in Barking Hotel
INQ14.4b	Barking Hotel Layout, supplied to Ms Squires at the meeting on 8 February 2022 in Barking Hotel, submitted 27 April 2022
INQ14.4c	Last 10 years finance, supplied to Ms Squires at the meeting on 8 February 2022 in Barking Hotel, submitted 27 April 2022
INQ14.5	Signed paper petitions in support of Mr Ali's case against the CPO, submitted 27 April 2022
INQ14.6	List of all local restaurants, food-chains and cafes as well as coffee shops within a 5-minute walking distance from Barking Station, submitted 27 April 2022

INQ15	Opening Statement on behalf of the Property Owners of 24-34 Station Parade (Plots 2-10), 29 April 2022
INQ16	Withdrawal of objection on behalf of Capite (Focal) Limited, in respect of their freehold interest at Focal House, 12-18 Station Parade, Barking, 29 April 2022
INQ17	Acquiring Authority's Response to Objectors not Appearing, submitted 29 April 2022
INQ18	Email exchange regarding Barking Hotel submitted 5 May 2022
INQ19	Delivery and Servicing Plan, August 2016 (part of the Transport Assessment for the outline planning application) submitted 5 May 2022
INQ20	Statement of Truth and Declaration of Adam Pyrke, submitted 6 May 2022
INQ21	Statement of Truth and Declaration of Ian Dimbylow, submitted 6 May 2022
INQ22	Email of support for the scheme by Ryan Edwards, local resident, submitted 9 May 2022
INQ23	Email response by Mr Sahota to AY, submitted 10 May 2022
INQ24	Withdrawal of objection by Network Rail Infrastructure Limited, 11 May 2022
INQ25	Memorandum of Agreement – 13-15 Ripple Road, submitted 23 May 2022
INQ26	Comparables – Former Health Centre, submitted 24 May 2022
INQ27	Letter dated 6 May 2022 from Alison Squires, AY to Paul Burley, regarding the Former Health Centre, submitted 24 May 2022
INQ28	Email objecting to the scheme by Joan Rawlinson, submitted 25 May 2022
INQ29	Statement of Case – Valuation / 'Comparables' on behalf of NHS Property Services, submitted 27 May 2022
INQ30	Letter dated 27 May on behalf of the Acquiring Authority to the Inspector, regarding the Statement of Case submitted on behalf of NHS Property Services
INQ31	Supporting Migrant and Ethnic Economies through Regeneration in London, submitted by Barking and Dagenham Heritage Conservation Group on 28 May 2022
INQ32	Supplementary Statement of Case – Valuation / 'Comparables' on behalf of NHS Property Services, submitted 31 May 2022
INQ33	Proof of Evidence of Virginia Blackman, Negotiations and Valuation Comparables
INQ33a	Appendices to Proof of Evidence of Virginia Blackman, Negotiations and Valuation Comparables
INQ33b	Summary Proof of Evidence of Virginia Blackman, Negotiations and Valuation Comparables
INQ34	Proof of Evidence of Howard Williams, Valuations/Comparables
INQ34a	NHSPS-12 Email from Alison Squires dated 6 May 2022

INQ34b	NHSPS-13 Email dated 3 December 2021 and spreadsheet 'AY Review of ME Land Value Comps 021221'
INQ34c	NHSPS-14 Comparable Evidence in real Estate Valuation, First Edition, October 2019
INQ34d	NHSPS-15 Barking 360 Planning Application Form
INQ34e	NHSPS-16 Barking 360 Land Registry Information
INQ34f	NHSPS-17 LBBB Cabinet Report November 2015
INQ34g	NHSPS-18 LBBB Cabinet Report Appendix 1 November 2015
INQ34h	NHSPS-19 LBBB Cabinet Minutes November 2015
INQ34i	NHSPS-20 Welbeck Wharf Land Registry Information
INQ34j	NHSPS-21 LBBB Cabinet Report December 2018
INQ34k	NHSPS-22 LBBB Committee Report December 2020
INQ34l	NHSPS-23 125 River Road Land Registry Information
INQ34m	NHSPS-24 Thames View Land Registry Information
INQ34n	NHSPS-25 Orion Park Land Registry Information
INQ34o	NHSPS-26 King Edward's Land Registry Information
INQ34p	NHSPS-27 Barking Wharf Land Registry Information
INQ34q	NHSPS-28 Aylesbury Estate Inspector's Report (NPCU/CPO/A5840/74092 dated 29 January 2016) and Decision Letter
INQ35	Surveyors advising in respect of compulsory purchase and statutory compensation, 1st edition, April 2017, submitted 21 June 2022
INQ36	Response by the Acquiring Authority to the further submission by Barking and Dagenham Heritage Conservation Group (INQ31), submitted 22 June 2022
INQ37	Response by Barking and Dagenham Heritage Conservation Group to the response by the Acquiring Authority (INQ36), submitted 23 June 2022
INQ38a	Redetermined 2018 Aylesbury Estate Decision Letter, 14 November 2018; submitted on behalf of NHS Property Services 30 June 2022
INQ38b	Redetermined 2018 Aylesbury Estate Inspector's Report, 13 June 2018; submitted on behalf of NHS Property Services 30 June 2022
INQ38c	Aylesbury Estate Consent Order, 3 May 2017; submitted on behalf of NHS Property Services 29 June 2022
INQ39	Additional Note from NHS PS, submitted 30 June 2022
INQ40	Withdrawal of objection by UKPN to the Stopping-up Order, 30 June 2022
INQ41	Schedule of Objections, 1 July 2022
INQ42	Closing submissions on behalf of Mrs Marwaha, submitted 29 June 2022
INQ43	Closing submissions on behalf of 24-34 Station Parade, Barking

INQ43a	Chesterfield Properties Plc v Secretary of State for the Environment (1997)
INQ43b	R. (on the application of Argos Ltd) v Birmingham City Council and Network Rail Infrastructure Ltd: compulsory purchase order - general vesting declaration
INQ44	Closing submissions on behalf of 17-19 Ripple Road, Barking
INQ45	Closing submissions on behalf of NHS Property Trust
INQ45a	Transport for London (formerly London Underground Ltd) v Spirerose Ltd (in administration) (2009)
INQ45b	R. (on the application of Argos Ltd) v Birmingham City Council and Network Rail Infrastructure Ltd: compulsory purchase order - general vesting declaration (2012)
INQ45c	Secretary of State for Transport v Curzon Park Ltd and others (2021)
INQ46	Closing submissions on behalf of the Acquiring Authority
INQ46a	Appendix 1 - CAAD Timescales
INQ46b	Appendix 2 - The Proper Approach to the Public Sector Equality Duty in Decision-Making
INQ46c	Objectors who appeared at the inquiry, not otherwise covered in closing submissions

Appendix Q

Nicholsons Shopping Centre decision



Compulsory Purchase Order Decision

Inquiry Held on 26-28 October 2022

Site visit made on 28 October 2022

by John Felgate BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Levelling Up, Housing and Communities

Decision date: 3 January 2023

Case Ref: PCU/CPOP/T0355/3295397

The Royal Borough of Windsor & Maidenhead (Nicholsons Shopping Centre and Surrounding Area at High Street, Queen Street and King Street, Maidenhead) Compulsory Purchase Order 2022

- The Order was made under Section 226(1)(a) of The Town and Country Planning Act 1990, Section 13 of The Local Government (Miscellaneous Provisions) Act 1976 and the Acquisition of Land Act 1981.
 - The Order was made by the Council of the Royal Borough of Windsor & Maidenhead (the acquiring authority), on 22 February 2022.
 - The Order authorises the compulsory acquisition of all interests in the land coloured pink and the compulsory acquisition of new rights over the land coloured blue, on the Order Maps numbered 1-4, as defined and described in the Order Schedule.
 - At the close of the inquiry, there were 11 remaining duly-made objections, with three other duly-made objections having been withdrawn prior to or during the inquiry.
-

DECISION

1. The Compulsory Purchase Order is not confirmed.

INTRODUCTORY MATTERS

Background

2. The Order Lands are located in the town centre of Maidenhead, within the area bounded by High Street, Queen Street, King Street and Broadway. The greater part of this area comprises the Nicholsons Shopping Centre, an enclosed, indoor shopping mall, developed mainly in the 1970s with some later additions. The freehold interest in the shopping centre is held by Denhead SARL, a 'special purpose vehicle' company incorporated in Luxembourg. In addition, the Order Lands also include the Broadway multi-storey car park, with associated retail units fronting onto King Street, and a 4-storey office building known as Siena Court. The freeholds of these land parcels are owned by the Royal Borough of Windsor and Maidenhead (RBWM) Council.
3. On 31 March 2021, the Council and Denhead SARL entered into a Development Agreement relating to the proposed redevelopment of their combined holdings in the Order Lands. The Development Agreement is also supported by a Land Swap Agreement, designed to rationalise the parties' respective interests in order to facilitate the carrying out of the development.

4. At around the same time, in March 2021, the Council resolved to grant planning permission for a comprehensive mixed-use redevelopment of the site, to be known as the 'Nicholson Quarter' development. The proposed scheme provides for a range of flexible-use units for retail, restaurants/cafes/drinking establishments, hot food takeaways, financial and professional services, assembly and leisure, and non-residential institutions, together with offices, business uses, residential development, Class C2 accommodation for the elderly, car parking and public open space. Under the terms of the hybrid application, some of these elements are specified in full detail, and others in outline. The applicant for the development was Areli Real Estate Limited, whose role is described as Denhead SARL's operating partner and development manager. Following the completion of a Section 106 agreement, the planning permission was granted on 21 October 2022.

The Order

5. The Compulsory Purchase Order was made on 22 February 2022. If confirmed, the Order would authorise the compulsory acquisition of all interests in the Order Lands, and of specified rights over various adjoining properties. The Order's stated purpose is: *"...facilitating the carrying out of development, redevelopment or improvement on or in relation to the land, namely a mixed-use development comprising a mixture of employment, residential, retail, leisure, community and elderly care homes in the heart of Maidenhead town centre, together with improvements to the public realm and open space"*.
6. The interests to be acquired include the leasehold interests and occupational licences in the retail units and ancillary areas of the Nicholsons Shopping Centre, and in the parking decks and retail units of the Broadway car park. In the majority of cases, these interests are said to have now been acquired by voluntary agreement, or their terms varied to allow vacant possession to be secured prior to the planned commencement of the development. Also included is a strip of unregistered land forming part of the highway of King Street.
7. The rights to be acquired over other properties include rights of access and general construction, which would include the right to enter land, and to manage access to it, and to carry out works including protective works, boundary treatments, re-grading, resurfacing, landscaping, support works, and accommodation and reconfiguration works. In addition, rights are sought which variously include rights to oversail with cranes, to erect scaffolding and hoardings, to carry out works to service media, plant and fire escapes, and to gain access for the purposes of delivering materials and machinery, and to form temporary accesses, and to carry out maintenance or repairs. In some cases, party wall rights are to be acquired which would include rights to carry out works of demolition, support, making good, and roof protection. In all cases, these rights relate only to works to be carried out during the course of the construction of the development.

Compliance with statutory requirements

8. The Order is accompanied by a Statement of Reasons. The Statement sets out the background to the Order and records that the Council's decisions to use compulsory purchase powers to bring forward the redevelopment of the site, and to make the Order, were taken through formal resolutions at two Cabinet

meetings, held on 26 February 2020 on 25 March 2021. These details have not been challenged by any party, and I have no reason to question them.

9. At the present inquiry, it was noted by some parties that the Statement of Reasons incorrectly describes the development plan for the area as including the Maidenhead Town Centre Area Action Plan, adopted in September 2011. As of the date of making the Order, that plan had in fact been superseded by the adoption of the Maidenhead Borough Local Plan, on 8 February 2022. Whilst this was a clear error on the Council's part, it does not seem to me to be one which would be likely to affect the validity or lawfulness of the Order itself. The substantive issue of the relationship of the Order to the relevant adopted planning policies will be addressed elsewhere in this decision.
10. On 23 May 2022, in its role as the acquiring authority, the Council issued a General Certificate in support of the Order. The Certificate confirms that notices of the Order were published in a local newspaper, and affixed at various places adjacent to the site, and also served by post on those known to have qualifying interests. Although the initial notices contained an error in the address for objections, they were re-served with the necessary correction, and the objection period was extended accordingly. It is not disputed that copies of the Order documents were made available at Maidenhead Library. The General Certificate was also accompanied by a Protected Assets Certificate. I am satisfied that all of these statutory requirements were properly complied with.
11. During the inquiry, Mr Hill, an interested person, questioned whether the relevant procedure for giving notice of the inquiry had been complied with, in accordance with the Compulsory Purchase (Inquiries Procedure) Rules 2007. However, for non-ministerial orders, the relevant requirement in this regard is set out at Section 11(2) of those Rules. At the inquiry, the acquiring authority produced evidence of compliance, in the form of photographs of site notices, and a certificate of billposting. In the absence of any direction from the authorising authority (in this case the Planning Inspectorate), a notice in a local newspaper is not required. Nor is there any specific requirement for the date to be published on the Council's website. In the circumstances, I am satisfied that the relevant statutory procedures were fully complied with in this regard.

The objections to the Order

12. A total of 14 objections to the Order were made. Of these, one was withdrawn prior to the opening of the inquiry (by B Bailes), and two more were withdrawn during it (Hanwell Holdings Ltd, and S Pospischil & Ms K Potts), leaving 11 remaining objections as at the inquiry's close.
13. Of these, three of the objections are from persons holding leasehold interests which are proposed to be acquired through the Order: Lee and Dean Page, Aegon UK Property Fund Ltd, and WH Smith Retail Holdings Ltd.
14. Eight of the others are from parties with interests in properties over which new rights would be taken: Lloyds Bank PLC, M James, R Harding, Brock House Investments Ltd, Telefonica UK Ltd, McDonalds Global Markets LLC, and T Fraser. The final objector, MNK Estates (UK) Ltd, has no known interests in any directly affected property.

The inquiry

15. The inquiry sat for three days, on the 26, 27 and 28 October 2022, at the Maidenhead Town Hall. Following a further exchange of written submissions, the inquiry was closed in writing on 14 November 2022.
16. The objection made by Messrs L and D Page was supported by an appearance at the inquiry. All of the other remaining objectors opted to proceed by way of written submissions, or to rely on their original objections.
17. In addition, three other interested persons were also permitted to speak at the inquiry.

Site visits

18. During the inquiry, I carried out accompanied visits to Nicholson House and Smokeys Nightclub, which are the subject of the objections by Aegon UK and L & D Page respectively. No other objectors requested an accompanied visit, but nevertheless, I was able to view the exterior of all of the remaining objectors' properties on an unaccompanied basis.
19. In addition, I also carried out a series of further unaccompanied visits during the period of the inquiry, in which I viewed the remainder of the Order Lands, plus much of the surrounding area.

Post-inquiry correspondence

20. Since the close of the inquiry, it has been brought to my attention that a legal challenge has been commenced, by way of a claim for judicial review, against the planning permission for the development of the Order Lands, granted on 21 October 2022. However, those proceedings are as yet at an early stage, and may take some time to reach a conclusion. In the meantime, the permission stands. I am not persuaded that the commencement of this challenge is sufficient grounds to justify delaying my decision on the CPO.

THE CASE FOR CONFIRMATION OF THE ORDER

The existing situation

21. The acquiring authority identifies numerous shortcomings and deficiencies in the existing development on the Order Lands. Internally, the Nicholson shopping centre in its existing form is said to offer an uninteresting and somewhat sterile environment, with no sense of place and little to attract customers to spend time there. Externally, the shopping centre offers unattractive blank facades which turn their back on the surrounding streets and neighbouring properties. The multi-storey car park is described as monolithic in scale and purely functional in its design.
22. In addition, the only route through the site in a north-south direction is via a single corridor exit from the shopping centre, and then through the car park by way of the lift or stairs, to a single entry point on Broadway. This is an uninviting and somewhat daunting route, and in any event is only available during opening hours. Together therefore, the existing development creates a substantial physical barrier to pedestrian movement through and around the town centre, including between the High Street and the railway station.

23. For the most part, these criticisms of the existing buildings' design and layout are not disputed. From my own observations, I find them all to be well-founded.
24. The Authority goes on to argue that the retail units within the centre are not well suited to current day requirements, due to their excessive size, lack of variety and flexibility, and the deep-plan format which allows little scope for subdivision or adaptation. In the face of changing retail trends and shopping habits, trading performance is said to have dropped, vacancies have risen, and a downward spiral has set in, manifested in diminishing levels of footfall, occupancy and trading margins. These effects are also said to be exacerbated by rising maintenance costs and consequent high service charges.
25. As a result, the centre as a whole is now regarded by the Authority as no longer a viable asset, nor one into which any landlord would be likely to invest the significant funds that would be needed to arrest the decline. As evidence, the Authority point to the fact that the Centre's previous owner went into administration, and that the sale to Denhead SARL in 2019 was at a price some 30% below the value that was put on the site only four years earlier, and 70% less than the figure for which it sold in 2007.
26. Attention is also drawn to the Retail and Town Centre Update Study, in October 2019, which found that despite having a catchment population with well above average spending power, Maidenhead was losing trade to surrounding towns due to the unbalanced and poorly configured nature of its retail stock. In this regard, the Nicholson Centre in particular was singled out as inefficient and outdated, and ripe for redevelopment.
27. The Authority's assertions on these matters are not entirely unchallenged. Some objectors suggest that the shopping centre's decline has been brought about intentionally. Others see nothing inherently lacking in the centre as it now is. However, there can be no doubting that the Nicholson Centre is a product of its time, and that trends in retailing have changed significantly since then. On the evidence available, it seems to me that the Authority is more than likely to be right in its assessment that the shopping centre building is no longer capable of meeting modern needs.
28. There is also some force in the Authority's contention that the present time is a good one to pursue some form of radical redevelopment. The recent opening of the Maidenhead station on the new Elizabeth Line railway has evidently sparked considerable interest in the town. The progress of several major developments, including the Landing, Watermark, Waterside Quarter and Chapel Arches sites, has injected a wave of new investment in the local property market. And similar influences appear to be at work elsewhere in the Thames valley, leading to the perception of a 'silicon corridor' effect. Consequently, despite the current economic difficulties at national level, with high inflation, energy prices and interest rates, and the uncertainties resulting from recent political changes, it seems to me that in this particular location there is logic in the argument that this is the right time to capitalise on the area's sense of momentum. I agree that to do so would be in both the local and national interest.
29. Given the Order site's key position at the very heart of the town, I agree that it is important that it should be used in a way that contributes positively to Maidenhead's identity, and meets the needs and aspirations of the resident

community and local businesses. Having regard to the above matters, it is clear to me that the existing, somewhat mediocre shopping centre and car park buildings have a negative effect on the town centre's character and appearance, and on the ability of users to move freely around the town centre. The shopping centre also fails to offer the type of facilities that are required in today's market. In the light of these findings I am satisfied that, in general terms, the replacement of the existing buildings would have the potential to benefit the town's economic, social and environmental well-being.

The benefits of the proposed Nicholson Quarter development

30. At ground floor level, the proposed redevelopment scheme would provide for around 66 new, flexible retail units, suitable for a range of uses including shops, services, cafes, restaurants and leisure uses, with a total usable area of around 8,360 sq m. Although this would be a reduction in retail floorspace compared to the existing Nicholson Centre, in terms of the number of units it would represent a slight increase. Importantly, whilst a range of different sizes would be provided, these would be weighted mainly towards smaller units, which are seen as better geared to the emerging, post-covid pattern of demand, focussing on locally-based, independent retailers and 'artisan-style' shops. Based on the evidence presented, I agree with the Authority that the type of retail provision envisaged in the proposed scheme seems well suited to Maidenhead's present and likely future needs. As such, the development would contribute to improving the town centre's vitality and viability.
31. These new units would be arranged in a series of attractive, interconnected outdoor streets, small yards and squares, designed as social spaces, to accommodate planting, seating, café tables, market stalls and other activities. The two existing pedestrian connections to the High Street would be supplemented by a third, via what is now White Hart Road, and the connection to Queen Street via Brock Lane would be maintained and enhanced. A new north-south pedestrian axis would be created, with access onto Broadway, and the east-west axis via Brock Lane would be extended through the site to emerge onto King Street. At the convergence of these routes there would be a new public square, with smaller secondary spaces at other key points. All of these pedestrian routes and spaces would have active frontages, comprising mainly retail or similar uses.
32. To my mind, this layout would improve markedly on the existing development at the site in several ways. It would enhance the town centre's permeability and connectivity. It would better integrate the site with the existing street pattern, knitting it into the town's urban grain. It would provide inviting spaces for shoppers, office workers and residents to meet and relax. It would bring a sense of life and activity to otherwise dead spaces, including in the evenings. It would create natural surveillance and improved personal safety. And it would create opportunities for an attractively designed public realm, with a new sense of place, at the heart of the town centre. In all these respects, it seems to me that the development now proposed would represent a substantial improvement over the existing indoor shopping centre that it would replace.
33. On its upper floors, the development would provide for in excess of 29,000 sq m of new Class B1 office workspace, in a range of sizes and configurations, from 375 sq m to 2,600 sq m. Whilst some existing office floorspace would also be lost, mainly at Siena Court, the net addition would still amount to over

23,000 sq m. This is said to equate to about 30% of the town's forecast needs within the current Local Plan period, to the year 2033. Based on the evidence, Maidenhead is clearly a well-established regional office centre, with a buoyant market and strong demand. Although there are other office developments also in the pipeline, and some older space available for reletting, there is no evidence of any significant oversupply. I see no reason to doubt that the office elements in the proposed scheme would meet an established need, and as such, would help to sustain the local economy.

34. In terms of housing, the proposed scheme for the Order Lands would provide for up to 346 open-market apartments, plus 307 Class C2 elderly persons' units with extra care facilities, amounting to over 650 new dwellings in total. Whilst the Council currently claims a housing supply in excess of five years, it was unable to do so prior to granting planning permission for the Nicholson Quarter development, in March 2021. I also note that the Council's housing delivery test results show a pattern of persistent under-delivery for several years, before the adoption of the new Local Plan in February 2022. It is clear from this that meeting local housing needs in the Royal Borough has long been, and continues to be, a considerable challenge. The residential elements of the proposed scheme would make a substantial contribution to local housing needs. I note that there is no certainty that the development would provide any 'affordable' housing, because any such provision would depend on the outcome of a further viability review, but this does not change my view that securing the provision of around 650 dwelling units, on previously developed land in a central location, would be a substantial benefit to the town.
35. With regard to parking, the proposed scheme would provide just over 1,300 car or vehicle spaces in total. Of these, about 700 would be for public parking, and 88 would be replacements for existing private spaces which would be lost. The remainder would be dedicated spaces for the new offices, apartments, and extra-care housing. Between them, these car parks would also be capable of providing up to 125 charging points for electric vehicles. Over 800 cycle parking spaces are also proposed, in an area where little if any dedicated cycle provision appears to exist now. All of these numbers appear to broadly accord with the relevant planning policies relating to car and cycle parking. In my view, these elements of the scheme strike a sensible balance between the aims of attracting footfall and activity to the new centre, whilst encouraging sustainable modes of transport. As such, the development now proposed would bring about an improvement over the existing situation, benefitting the town's transport infrastructure, and improving the way that its movement networks function.
36. The proposed development would provide the opportunity for a range of well-designed, high quality buildings, employing modern technology, meeting current standards of energy and water efficiency. In so far as some parts of the scheme have as yet reached only the outline permission stage, I note that the reserved matters for those phases are to be controlled by reference to an approved detailed Design Code. And on a technical level, modern standards are guaranteed by the need to comply with national building regulations. In addition, the scheme would substantially increase the density of development on the site, and thus make much better and more efficient use of land in such a highly sustainable location. In all these respects, the development now proposed would represent a considerable improvement on the existing undistinguished and outdated buildings on the site.

37. The Nicholson Quarter development, excluding land acquisition and finance, is estimated to cost around £380m. Of this, some £326m is accounted for in construction costs, , and the remainder on marketing, sales, fees and contingencies. It is not unrealistic to assume that a proportion of the materials, labour and services required would be sourced locally, and therefore contribute to the local economy. The construction phase itself is expected to create around 2,400 jobs, over a 3 - 4 year period. When complete, the office and retail elements are estimated to provide for over 2,200 FTE permanent jobs. This new workforce, together with the resident population of the development, would add to the town centre's footfall, and support local businesses in the daytime and evening economies, with the additional local spending estimated at up to £11.4m per annum. Furthermore, the improved retail and leisure offer created, with its greater distinctiveness and sense of local identity, would help the town to retain more of its own retail expenditure, reducing leakage to neighbouring centres. And in addition, the development would also have the potential to act as a catalyst for further investment and regeneration in the town.
38. Having regard to all the above considerations, I am satisfied that the proposed redevelopment of the Order Lands would bring clear benefits to the town of Maidenhead, and the wider area, in terms of its social, economic and environmental well-being.

Relationship to the planning framework for the area

39. In the Borough Local Plan (the BLP), the Order Lands are identified as site AL1, which is allocated for a mixed use development, providing retail and community uses, 15,000 sq m of employment space, approximately 500 residential units, and a public square. Policy QP1a states that Maidenhead town centre is to be renewed and enhanced, and identifies the redevelopment of the Nicholson Centre as a key contributory element in achieving that aim.
40. Policy SP1 identifies Maidenhead town centre as part of a strategic growth location, and as a major focus for sustainable growth and regeneration, for new housing, employment, retail and leisure. Policy TR3 supports proposals that promote and enhance the role of the town centre, and particularly those that enhance or diversify retail activity.
41. Objectors question whether the detailed criteria in some of these policies, or other relevant policies such as design, car parking, affordable housing, or the provision made for specific uses, have been met in full. These issues will undoubtedly have been relevant to the Council's decision, as Local Planning Authority, as to whether to grant planning permission; and as far as I can tell, they were indeed taken into account in that decision. However, for the purposes of my decision regarding the CPO, the question is one of broad principles, i.e. whether the scheme is in general accordance with the adopted policy framework for the area.
42. To my mind, the development now proposed for the Order Lands clearly accords with the aims of the site-specific and area-specific policies of the development plan, as set out above. As such, it is aligned with the planning framework for the area.

Prospect that the scheme will proceed

43. According to the evidence put before the inquiry, the Nicholson Quarter development is to be funded by Tikehau Capital, a privately-owned, French-based investment and asset management business, which is Denhead SARL's parent company. Tikehau is said to have access to substantial funds for investment in projects of this type, and already has available or committed equity from shareholders and institutional investors, sufficient to more than meet the entire costs of the development from this source if necessary. Alternatively, the company is also confident of being able to attract additional investment or debt financing from other sources. Whilst the evidence on these matters has not been substantiated in detail, I have no reason to doubt it. Based on the evidence before me, I am satisfied that the necessary resources are available.
44. A number of viability appraisals have been carried out for Denhead and their partner Areli Real Estate, and in some cases these have been subject to formal review on behalf of the Council. Some objectors contend that the number of different assessments and methodologies, and apparently differing results, indicates some uncertainty or lack of clarity as to the scheme's viability. However, none of the assessments suggest that the development is unviable. Rather, the results show differing levels of profit, and of return on costs. To my mind, these differences are not particularly surprising, given their differing purposes and dates, and the inevitable changes in costs and values over time. The most up-to-date appraisal is that carried out by the Authority's witness Mr Garside, for the purposes of his inquiry evidence. That appraisal, which appears to me to be comprehensive and robust, shows an overall return of just over 20%. I have no doubt that further appraisals will be needed prior to the start of any development, and that the results may vary from Mr Garside's present figure, as circumstances continue to change, and indeed as the details of the scheme itself continue to evolve. But the same would apply to any development of this scale. I note the various detailed criticisms of these figures made by objectors, but there is no requirement for viability to be proven beyond all doubt; I have considered the matter on the balance of probability. Based on the best evidence before me now, I can see no reason to doubt that, in general terms, the development as a whole can be regarded as financially viable.
45. In addition, I note that the developers have identified a range of 'de-risking' strategies, including forward sales, pre-lets, partnering and joint ventures. If necessary, such measures could potentially enable the development to proceed, or indeed to continue, even if the rate of return were to fall below that which would normally be required. In my view, this is a prudent approach, ensuring a degree of resilience against future economic and market conditions. This reinforces my view that the scheme should be viewed as viable.
46. From the information provided, the combined effect of the Development Agreement and Land Swap Agreement is that, if and when various conditions are fulfilled, Denhead SARL would then have the right to exercise an option to acquire the Council-owned parts of the site. This would trigger a further series of obligations on both sides, including the start of demolition and excavation works by the developers, and the construction of the new car park by the Council. As objectors point out, the optional element in this arrangement does not amount to a binding commitment to go ahead with the development. But

nevertheless, it is evident that both parties have already committed a great deal of time and money to reach this stage. Indeed Denhead states that it has so far incurred expenditure of £35m on acquisition costs, running costs, and professional fees, with a further £1.5m said to have been committed in respect of the on-going CPO process. Whilst these figures have not been substantiated in detail, to my mind they appear broadly commensurate with the scale of the project, and I see no reason to doubt their accuracy. The Council too must clearly have invested considerable amounts of officer and member time and costs. To my mind, both parties have demonstrated a high level of commitment to the project, and I see no reason to doubt the continuing desire on both sides to bring the scheme to fruition.

47. From the evidence provided, Tikehau Capital's previous experience in property development has been predominantly outside the UK. But nevertheless, it does appear to have relevant experience in large projects elsewhere. Denhead SARL, as a recently-formed special purpose company, has no apparent track record in its own name, in terms of completed projects. Much the same applies to Areli, which was formed in 2018. But nonetheless, these companies are apparently each able to call on an experienced management team, augmented by external agencies, with directly relevant experience and expertise. I see no reason to doubt that the developer and their advisers have the necessary capabilities to deliver the development, and to manage the project through to completion.
48. Stopping-up Orders are needed in respect of a few small areas of public highway. These have been applied for, and the Department for Transport has confirmed that no objections were received within the relevant period. Consequently there seems no reason to doubt that the necessary Orders will be granted in due course. Aegon UK suggests that rights held in connection with Nicholson House may allow construction works to be prevented, but this assertion has not been substantiated. In any event it seems likely that the power under S.203 of the Housing and Planning Act 2016, to override easements and other rights in certain circumstances, could be used if necessary. Based on all the evidence before me, there do not appear to be any insuperable legal or physical impediments to the development.
49. Taking account of all the above matters, I am satisfied that, if the CPO were confirmed, the proposed redevelopment of the Order Lands would appear to have a good prospect of going ahead.

Overall summary of the case for confirmation of the Order

50. For the reasons set out above, I agree that the redevelopment of the Order Lands, as now proposed, would accord with the development plan strategy for the area, and would bring significant benefits for the social, economic and environmental well-being of the town. I also accept that, if the CPO were confirmed, there is clear evidence that the scheme is viable, and that the necessary funding, expertise and commitment would be available. The proposed development would therefore have a good prospect of proceeding. These considerations all weigh in favour of confirmation.

THE OBJECTIONS

Objection by Mr Lee Page and Mr Dean Page (trading as Smokeys Nightclub)

The objection

51. Lee and Dean Page are partners in the business which trades as 'Smokeys', a nightclub located in Unit 24a of the Nicholson Centre. On the Order Map, the plots occupied by the club, together with its outdoor terrace and ancillary areas, are Nos 29, 32, 33, 34, and 1/18. The club has the benefit of a lease granted to Lee and Dean's father Ron Page, which runs to 23 June 2030. Ron Page recently passed away, with this part of his estate passing to Lee, Dean and their mother Tracey Page. The CPO proposes to compulsorily acquire all interests in the club's premises.
52. The main grounds of objection are that no suitable relocation premises have been offered, and that consequently the business faces a threat of extinguishment.

The role of Smokeys Nightclub

53. The business has evolved out of that which was started by Ron Page in 1962, first as a café, and then as a cabaret venue, before taking on its present form as a nightclub in 1995. It has operated from the present premises since 1967. In 2007 the premises were extended to add the terrace and a second bar area, and in 2017 a major refurbishment and rebranding was carried out, said to have cost around £500,000. The name Smokey Joe's was adopted in 1995, and shortened to Smokeys in 2017. The business has always been owned and managed by members of the family.
54. The present premises are said to offer a net usable space of just over 4,000 sq ft (370 sq m) internally, plus the outside terrace, with an overall capacity for over 400 persons. Customers come primarily to drink, socialise, dance and listen to music. Although the average age is said to be 28, the overall age range is said to be broad; and the inquiry heard oral evidence from one such customer, Mr Sidwell, which appeared to corroborate this point. At its peak, prior to the Covid-19 lockdown period, the club is said to have had an overall attendance of around 100,000 persons a year. Currently it is also said to have 15,000 followers on social media.
55. The club offers regular live music acts, and over the years has hosted many artists who either were already, or went on to become, nationally or internationally well-known names. It is clear that the Page family take great pride in the club's role, in bringing high quality entertainers to Maidenhead, and also in helping new performers to get started. By their account, Smokeys is the only venue of its type, and the only one offering live music in this type of setting, in Maidenhead or the wider area. The importance of creative industries in the Borough is recognised in the RBWM Corporate Plan for 2021-26.
56. The club's licence allows it to stay open to 04.00 on most nights, and to 03.00 on the others, which is seen as a significant factor in attracting a regular clientele, and an important feature in the club's business model. Despite these hours, it is claimed that the club has been free from any significant complaints, and enjoys good relationships with the police and licensing authorities. In part this is attributed to the location of the existing premises, with the advantage of having no residential neighbours in close proximity.

57. The business is said to employ between 30 to 50 full or part time staff, depending on seasonal demands and trading conditions, with up to 20 being on site at any one time. Most of these are said to be young people, typically school leavers in their first job. Again, Lee and Dean Page are evidently proud of their record in training and developing their staff, and preparing them for the demands of the employment market.
58. According to the evidence presented, Smokeys has been instrumental in organising and supporting the regular 'Fi-Fest' summer musical event, attended by many. It has also given support to a number of local charities through sponsorship and training opportunities. In addition, it is said that the club has provided a home for persons identifying as 'LGBTQ+', by hosting regular dedicated events and a dedicated, private LGBTQ+ page on the club's website, and also providing facilities for specific groups, and generally by promoting inclusiveness throughout in the running of the club. The Authority questions the extent of the club's role in providing specifically for the needs of the 'LGBTQ+' community, but I see no reason not to accept the evidence of the club's owners on this point.
59. In March 2019, following the Community Planning Weekend held by Areli in preparation for the Nicholson Quarter scheme, the Reportback Presentation recorded a desire amongst participants for a 're-provided nightclub'. This appears to be a reference to the potential loss of Smokeys, and an indication of public support for the club's retention within the redevelopment.
60. For the most part, the evidence presented by Lee and Dean Page on all the above matters is undisputed. Based on this evidence, and my observations on my site visit, I agree that in its local context, Smokeys Nightclub is a notable, and in many ways a unique facility. It provides a leisure facility for evenings out and late-night entertainment, which evidently meets the needs of substantial numbers of loyal and regular customers, in the town and its hinterland. It is clearly appreciated and valued by those people. It also contributes to the area's social and cultural life. And in a small way, it is part of Maidenhead's history. In contrast, the loss of the club would diminish the opportunities available to local people for pleasurable relaxation and social activity. It would also reduce job opportunities, particularly in the youth sector, and openings for aspiring performers to advance their careers.
61. For all these reasons, I conclude that Smokeys Nightclub has an importance to the town which exceeds its apparent size as measured merely in terms of floorspace, turnover or financial value. The loss of Smokeys, if that were to occur, would have a significant adverse impact extending beyond the direct effects on the business itself and its owners, including on customers, staff and performers. As such, the business is one which is worthy of some effort to retain or relocate within the locality if possible.

Planning status

62. The use of premises as a nightclub is defined in the BLP as a 'main town centre use'. At national level, a similar definition is also contained in the National Planning Policy Framework (the NPPF). BLP Policy TR1 requires that the preferred locations for main town centre uses are Maidenhead and Windsor town centres, followed by district and local centres.

63. In the case of Smokeys therefore, the club's existing location in the Nicholson Centre is compliant with the most relevant development plan policy relating to leisure facilities of this kind. If the club were to relocate, another location within Maidenhead or Windsor town centres would equally comply. Any premises outside of these two centres would be sequentially less preferable, and any location outside of a town, district or local centre would be non-compliant.

Personal circumstances

64. Lee and Dean Page state that they have worked in their business, initially alongside Ron and Tracey Page, and now on their own account, for the whole of their working lives. Because of their involvement together as business partners, and the history of the business within their family, they say they see Smokeys as a central part of their family life. As such, they have an emotional attachment to it as well as relying on it financially.

65. Both also have their own family responsibilities, [REDACTED]
[REDACTED]. Neither brother, by their own account, has any working experience in any other industry. Both are concerned for their futures, and those of their dependants, if the club is unable to continue.

66. These matters are unchallenged. To my mind, the evidence that Lee and Dean Page gave at the inquiry was measured and credible. I have little doubt that the effects on them and their families would be not only financial, but also mental and emotional. In all likelihood, the overall impact would be severe. This reinforces my conclusion that the loss of Smokeys Nightclub is an outcome to be avoided if other options are available.

Negotiations and engagement

The Guidance

67. The relevant Guidance¹ states that an acquiring authority will be expected to demonstrate that they have taken reasonable steps to acquire the land in question by agreement, and that compulsory purchase should be a last resort (Tier 1, paragraph 2). The same paragraph recognises that the use of compulsory powers will necessarily interfere with affected owners' human rights. The Guidance goes on to say that, in order to reach an early settlement, reasonable initial offers should be made, and authorities should engage constructively with claimants about relocation issues and mitigation or accommodation issues (paragraph 3).

68. It recommends undertaking negotiations in parallel with the preparation and making of an Order, as this can help to build good working relations with affected parties, and to show that the authority is willing to treat their concerns with respect; authorities should be able to show that meaningful and genuine attempts at negotiation have been pursued (paragraph 17). Paragraph 19 contains further advice on the kinds of ways in which Authorities can assist owners, so as to minimise uncertainty and anxiety.

¹ Guidance on Compulsory Purchase and the Crichel Down Rules, 2019

Period up to February 2020

69. In the present case, Denhead SARL and Areli Real Estate began discussions with the Council, with a view to a comprehensive development, in 2017. Those discussions also involved the Council's in-house property arm, RBWM Property Company Limited. Denhead completed the purchase of the Nicholson Centre in March 2019. Later that month, the company conducted a Community Planning Weekend, to gather input from the public. For its part, the Council approved in principle heads of terms for the sale of the Council-owned interests in the site to Denhead, on 1 March 2019, then gave delegated authority to negotiate the detailed terms on 25 April, and full approval to those terms on 23 July 2019.
70. A meeting was held between Areli representatives and members of the Page family on 13 January 2020. By Dean Page's account, the meeting was brief. After outlining the draft scheme, one of Areli's directors allegedly told the Pages that a nightclub could not be accommodated, and suggested changing the business to a restaurant². This account is not necessarily accepted by the Authority or those supporting the Order. But none of their inquiry witnesses was present at the meeting in question, and no written record appears to have been taken. Mr Page's first-hand account is therefore the only evidence on the point, and I have no basis on which to doubt its accuracy.
71. In a follow-up email dated 14 January 2019, Areli suggested the family consider relocating to existing premises, used as offices, above Holland & Barrett, in the town centre. This was viewed by the Pages but was considered to be unsuitable, due to its narrow floorplan on three floors, small capacity, fire escape issues, and what were seen as incompatible neighbouring uses³.
72. On 12 February 2020, Denhead SARL and the Council exchanged contracts on the Land Swap Agreement. A few days later, on 26 February, the Council's Cabinet approved the use of the Council's compulsory purchase powers for the development⁴. The details of this decision, and the reasoning behind it, have not been put before the inquiry, but as far as one can tell, this appears to have been the starting point which initiated the necessary preparatory work for the making of the Order.
73. At this stage, in relation to Smokeys Nightclub, the position was that the Pages had received a single approach, resulting in one meeting and one email. No offer had been made to acquire the Pages' lease by agreement, nor had any interest in doing so been indicated. One potential relocation opportunity had been suggested, but with little apparent consideration to the club's requirements. The discussion that had taken place with Areli appears to have started from the premise that the nightclub's lease would be brought to an end; even though at that stage the Council had made no formal or public decision to begin compulsory acquisition. The email of 14 January was perfunctory, to the point of being curt. As far as one can tell, no attempt had been made to engage constructively, or to establish any kind of working relationship. Nor had the concerns of the Page family been treated with respect. Nothing that had occurred up to this point amounted to a meaningful or genuine attempt to acquire their interest by negotiation.

² Dean Page's proof, para 21, and in his oral evidence

³ Doc H16 Pages' Timeline, and D Page oral evidence

⁴ Mr Brazier-Dubber's proof, para 8.2.6

Period from February 2020 to March 2021

74. In March 2020, the Pages were contacted by Areli's agent, suggesting another possible relocation site, in a former snooker hall, also in Maidenhead town centre. According to Dean Page, the premises were not on the market, so the family viewed it externally. In doing so, they identified a number of shortcomings that appeared to make it unsuitable⁵. Subsequently the agent suggested a third building, a former laundry, in a village location. This was also found unsuitable.
75. On 5 May 2020, the Pages received an email from Areli's agent⁶, seeking their agreement to a surrender of their existing lease. In return the family was offered statutory compensation plus a financial premium. Continued temporary occupation of the club's premises was also offered, on a rent-free basis, but terminable at three months' notice. The email also referred in general terms to providing further assistance with finding relocation premises. The offer was not taken up.
76. On 15 June 2020, Areli's planning application for the Nicholson Quarter was submitted and validated. In July, the Page family contacted local councillors to seek help, and on 10 July a meeting was held with the Leader of the Council, at which the family asked whether a replacement nightclub could be provided within the development. The Leader confirmed in an email dated 15 August that this request had been passed on to Areli.
77. On 10 September 2020, a meeting was held between agents for Areli and the Page family⁷. The meeting is said to have discussed terms for the surrender of the existing lease and matters relating to relocation. There is no indication that anything was put in writing, and no further detail of the discussion. No further correspondence or contact appears to have ensued.
78. On 6 November 2020, after further prompting by the Page family, a meeting was held between them and Barbara Richardson, the then head of the RBWM Property Company. At that meeting, Ms Richardson raised the possibility of relocating Smokeys within part of a 'flexible use' unit on the ground floor of the proposed new car park, fronting Broadway, in Zone 4 of the development. Zone 4 is the part of the scheme that would be built and owned by the Council, rather than Areli. The unit in question did not form part of the scheme as originally submitted, but was to be included as part of a suite of revised plans that were being prepared. Those revised plans were later submitted as an amendment to the planning application, on 16 November 2020.
79. The 6 November meeting led to an exchange of emails and further discussions between the Pages and Ms Richardson, between 16 November – 22 December 2020. During this exchange the family expressed enthusiasm for the Broadway unit in principle, and provided details of their requirements, and in return sought further details, including the configuration, measurements, heights and more detailed plans. Amongst other things, they emphasised on several occasions their need for a legally-compliant outdoor smoking area, which could also double as a 'break-out' space⁸. Ms Richardson provided some of this

⁵ D Page proof para 35, Doc H16 Pages' Timeline, and oral evidence

⁶ Doc H16, Pages' Timeline

⁷ Doc H42, Negotiation Record Sheet

⁸ Doc 42c: emails from Page family dated 16 and 18 November 2020

- further information, and undertook to discuss the Pages' other outstanding requests with Areli and Council officers.
80. On 13 January 2021, Ms Richardson reported that she had made some progress with these discussions, and that Areli had agreed in principle to meet the nightclub's fitting-out costs for the Broadway unit, subject to agreeing a budget. She was also taking a report to the Council's Cabinet to get approval in principle for a subsidised rent arrangement for an initial period. On 1 February 2021, she and the Pages held a virtual meeting to review progress. The family set out again that they would need to be sure that the unit offered could meet their requirements, and again requested more detailed plans⁹.
81. On 2 March 2021, the day before the Planning Committee meeting that was due to consider the Areli application, Tracey Page emailed to Barbara Richardson, emphasising the importance for the nightclub of having an attached outdoor space that could serve as a smoking area, and which would be fully within the club's control, for reasons of noise and security. Confirmation was sought that this could be achieved¹⁰. Ms Richardson replied on 3 March, enclosing two 'high level' example plans, and expressing the view that the relevant legal requirements could be met. Formal advice would be taken from the Council's Licensing officers.
82. In a further exchange on the same day, Mrs Page sought further reassurance in the form of a "categorical guarantee" that the smoking area could be achieved. She also expressed reservations about the L-shaped configuration depicted, with regard to the effects on the siting of the club's performance stage, and evacuation and security issues¹¹. Ms Richardson replied that she was confident that these concerns could be accommodated with further detailed work from the architects and others. Later that day, the Committee resolved to grant planning permission, subject to the completion of the S.106 agreement.
83. On 25 March 2021 the Council's Cabinet granted authorisation to officers to proceed with the making of the CPO. The report presented to that meeting stated that "*Whilst there is constructive dialogue with all occupiers who have not yet agreed lease terms, in some instances there is a notable difference of opinion as to the level of payment due to secure varied lease terms. The use of compulsory purchase powers is therefore necessary, to ensure that vacant possession of the retail accommodation can be secured....*". Shortly afterwards, on 31 March 2021, the Council and Denhead entered into the Development Agreement.
84. Summarising this period, from February 2020 to March 2021, what the Page family received from Areli and RBWM, in total, amounted to an approach for the surrender of their existing lease, and latterly an offer to explore the potential for their relocation to the proposed new unit on Broadway.
85. With regard to a surrender, the developers' offer had included a premium in addition to statutory compensation, and it is not for me to judge the adequacy of that offer in financial terms. However, given the circumstances, of a long established family business, and two relatively young current partners with their working lives ahead of them and families to support, it should have been

⁹ Doc H16, Pages' Timeline

¹⁰ Doc H23, T Page email 2 March 2021

¹¹ Doc H23, T Page email 3 March 2021

obvious that Lee and Dean Page's main priority would be to secure the continuation of their business. Consequently, for them this would require a settlement that not only covered their losses and other costs, but also allowed them the certainty of a suitable relocation.

86. In this regard, the efforts made by Areli and their agents seem to have been little more than a token. There is no evidence of any attempt having been made to establish the nightclub's requirements, other than in terms of square footage. In total, three opportunities had been identified and all were rejected. As far as I am aware, there is no suggestion that the Pages' reactions to those properties were misplaced. And yet no attempt seems to have been made by Areli to explore with them how to improve the chances of finding something more suitable. After the rejection of the third property, sometime in the summer of 2020, it appears that no further action was taken by Areli or their agents with regard to any other relocation sites. Whilst the Pages say they also conducted their own search, and were equally unsuccessful, that should not obscure the fact that the onus of finding a solution clearly fell on those who were proposing their displacement. From the start, Areli seem to have treated this task as a low priority, and then within a short time gave up altogether. RBWM were slow to react to this failure. At this time the CPO had not yet been made, and thus there was no legal requirement for Smokeys to move. It was incumbent on the promoters of the Order at this stage to see what could be achieved by persuasion, but no such persuasion had taken place.
87. Eventually the Council had come forward with the possibility of being able to offer part of the Broadway car park unit, and Barbara Richardson in particular evidently worked hard to progress that option. To that extent, by March 2021, the Council had now begun to engage constructively. But it is equally clear that this had only happened belatedly, after the Page family went above the heads of Areli and Council officers. Up to that point, the Council and RBWM seem to have been content to take a passive role. And in any event, despite Ms Richardson's efforts, she had not been able to assure the Pages on their principal concern, regarding the ability to provide a legally-compliant and fully controlled outdoor smoking area, which could also serve as a break-out space, overcoming noise and security issues, and replicating the role of the club's existing terrace. It had therefore not yet been established whether the Broadway unit would be capable of meeting the Pages' reasonable request for at least like-for-like capability.
88. As a result of these unresolved issues, as at 25 March 2021, when the decision was taken to proceed to make the CPO, the Council had not made any concrete offer, nor would the family have been in a position to make a decision on any such offer. Had there been a viable relocation opportunity at the Broadway unit, it seems probable that the Pages would have been willing to negotiate terms, but as things stood, they could not. The negotiation process therefore still had some way to go before it could reach any conclusion. It follows that at this stage the use of compulsory acquisition could not reasonably have been seen as a last resort.

Period from March 2021 to February 2022

89. In an email dated 6 April 2021, Tracey Page continued to press Barbara Richardson for answers on the question of the smoking area. In a holding reply dated 7 April, Ms Richardson acknowledged the importance of the issue and

stated that work was being done to find a solution¹². Another message, dated 27 May, indicated that the answer depended on input from the Council's Building Control department¹³. After a delay, a further email from her dated 2 August 2021 indicated continuing uncertainty regarding both Building Regulations and Licensing, and acknowledged the need for more detailed plans to resolve these issues¹⁴.

90. Shortly after this, it appears that Ms Richardson left her post with RBWM Property Company. Over the next 7 months or so, no further progress appears to have been made, and no further contact made with the Pages. But nonetheless, the Council's position was that they were working on a solution, and had said nothing to indicate that such a solution might not still be achievable.
91. On 22 February 2022, the CPO was made and published, and notices sent to the affected parties, including the Page family. At this date however, the position remained as it was 11 months earlier, that there was no clarity as to whether the nightclub's requirements could be met at the Broadway unit. No actual offer had been made to the Page family with regard to that unit. Nor had any other realistic relocation site been identified. Throughout this period since March 2021, there had been little engagement of any kind from the Council's side, despite the action being very clearly in their court. The working relationship achieved during the latter months of Ms Richardson's tenure had been largely lost. No meaningful negotiation had taken place for nearly a year.
92. Prior to 25 March 2021, the Pages had clearly been open to an offer in relation to the Broadway unit, as long as that unit could be shown to meet their requirements. Nothing that happened between that date and 22 February 2022 suggests that the family had changed their position in that regard, in any way at all. As of this latter date therefore, the prospect of a deal for Smokeys' relocation to Broadway remained potentially available. It follows that, at the date of the making of the Order on 22 February 2022, the position remained that compulsory purchase was not yet a last resort, and could not properly have been seen as such.

Period March – October 2022

93. Following the making of the CPO, two virtual meetings were held between the Pages and Chris Pearse of RBWM Property Company. At the first of these, on 4 March 2022, Mr Pearse agreed to help by asking Areli for further plans of the Broadway unit. At the second, on 11 March, Mr Pearse produced some basic plans for discussion, showing alternative ways of subdividing the unit. However, he then revealed that a smoking area was not now regarded as feasible, due to problems in meeting Building Regulations¹⁵. The Pages asked about an alternative option, of setting back the ground floor frontage to create a semi-external, glazed space, but according to the Authority's meeting note, it was left back with them to "*send over their ideas*" on this.
94. In a subsequent exchange of emails, on 19 March 2022 Lee Page continued to press for further information, with a view to exploring other options for the unit's configuration. In reply, on 24 March, Mr Pearse stated that the Council

¹² Doc H21, email from B Richardson 7 April 2021

¹³ Doc H22, email from B Richardson 27 May 2021

¹⁴ Doc H20, email from B Richardson 2 August 2021

¹⁵ Doc H42 Negotiation Record Sheet

now intended to re-engage with Areli's design team, and that once this appointment was made, they would be able to "*properly lay out a 4,000 sq ft unit for you in a regular rectangular shape*"¹⁶.

95. On 28 June 2022, Chris Pearse sent to the Pages a 'Heads of Terms' for the Broadway unit, setting out two options as to alternative rent levels and rent-free periods. The accompanying plan showed a re-configured, largely rectangular unit, but again without any external area.
96. On 1 July 2022, David Conboy on behalf of Areli contacted the Pages, to discuss compensation. A meeting was held on 19 July, for Mr Conboy to make an assessment of the existing nightclub premises. The family sought further information from Mr Conboy regarding the Broadway unit, including ceiling heights; this was outside his brief, but he undertook to pass on their questions. Mr Conboy did confirm that a smoking area could not be provided. He also conveyed the fact that the intended programme would mean a time lag of 18-24 months, between vacant possession being required in September 2023, and the Broadway unit being ready for occupation in 2025. The meeting note records that the Pages were previously unaware of this timescale¹⁷.
97. On 21 July 2022, Mr Conboy had a telephone discussion with the Pages' agent Giles Blagden. Mr Conboy proposed separating out the issue of compensation from that of relocation, to arrive at what would effectively be a 'clean break' figure. This would include an amount in respect of fitting-out costs for a future relocation, but not tied to any particular site. The Broadway unit could be offered to the Pages on the basis of an option agreement or first refusal, leaving the family free to consider any other premises in the meantime. Mr Conboy thought that this would be more favourable to the Pages than compensation based on extinguishment of the business¹⁸.
98. This suggested way forward was confirmed by Mr Conboy in an email dated 10 August 2022. A plan showing ceiling heights for the Broadway unit was attached. Details of Smokeys' 2017 refurbishment fit-out costs were also sought. A further exchange between Mr Conboy and Mr Blagden took place on 30 August, in which discussion returned to the possibility of creating an enclosed external space at the front of the unit, which had been left with the Pages to explore; Mr Blagden commented to the effect that his clients had found this difficult, based on the limited plans available to them¹⁹.
99. In a phone call to Mr Blagden on 4 October 2022, Mr Conboy set out his proposed figures for a financial settlement for the surrender of the nightclub lease. The amount offered was made up of a sum for fitting-out at any future new premises, a sum for fees, surveys and other incidentals, and a sum for re-establishment of the business. In total, this exceeded the value of the previous offer, made in May 2020, by about four times. On 7 October, Mr Blagden rejected this offer but tabled a counter-proposal. On 11 October, Mr Conboy increased the Areli offer by about a further 12%. This appears to have been the last significant interaction between the parties before the start of the present inquiry.

¹⁶ Doc H24a: C Pearse email, 24 March 2022

¹⁷ Doc H42 Negotiation Record Sheet

¹⁸ Doc H42 Negotiation Record Sheet

¹⁹ Doc H42a, email from G Blagden 30 Aug 2022

100. Over the course of these final negotiations therefore, from the making of the CPO onwards, the events of note were two. Firstly the possibility of providing an outdoor space at the Broadway unit was withdrawn. This was a major obstacle to any prospect of relocation to the Broadway unit, because throughout their 16 months of discussions with RBWM Property Company, the Pages had made it clear that this was their most important requirement. As to how this position came about, it appears not to be disputed that officers had tried their best to find a solution. But as far as one can tell, little or nothing seems to have been documented in terms of the options and possible solutions considered, and the reasons for their rejection, leaving the family in the position of being unable to challenge the eventual conclusion, or indeed to engage effectively in this part of the discussion. This impression is reinforced by the apparent reluctance of officers to explore Lee Page's suggestion of setting back of the front glazing.
101. Be all this as it may, it is difficult to understand why it took so long for officers to reach their conclusion that a smoking area could not be achieved, and to convey this news to the Pages. The information and expertise that were needed for this must have been freely available to either the Council or Areli. The time that was lost in this part of the process clearly undermined the Pages' negotiating position and, with hindsight, led to them wasting time that could have been spent on searching for other opportunities.
102. The second development during this final period was the new offer made to the Page family for a financial settlement. Again it is not for me to judge the adequacy of the offer itself. However, the fact that the new offer was so much higher than the one made in May 2020 suggests that the earlier one could not have been realistic; and despite the fact that the Pages responded with a counter-offer, the figures presented by either side were still a long way apart. In addition, the gap of more than two years between the offers reinforces the impression of a lack of genuine or constructive engagement in the interim. In any event, with regard to the issue of relocation, which was always the Pages' main priority, the offer provided nothing more than a potential option, for a unit which by then was known to be unable to meet the nightclub's needs. In this respect the offer afforded no security for the future of the business.

Matters raised since the cessation of negotiations

103. In their evidence to the inquiry, Lee and Dean Page made reference to a number of other potential issues relating to the Broadway unit, including matters relating to headroom for performance staging, ventilation, fire exits, waste storage, licensing, and the proximity to a bus stop. I agree that it would have been better if these issues had been raised at an earlier stage. But it seems likely that that task would have been made easier had RBWM been able to supply the more detailed plans and visual information that the Pages requested on numerous occasions.
104. In any event, by this stage RBWM and Areli had had over three and a half years to understand the needs of the business and how it worked. Had there been proper and meaningful engagement, with attention being given to the business's practical requirements, then it seems likely that these additional issues could have been anticipated and dealt with. Even if the issues in question may have been capable of resolution, they were potentially significant.

105. To my mind, the fact that such issues remained unidentified, so long after Areli's initial approach to the Pages, which made it necessary to consider relocation, is a further indication of the lack of meaningful engagement on their part, and that of RBWM.

Commentary on the negotiations as a whole

106. The Page family's existing lease gives statutory protection to their nightclub business up to June 2030. As the Guidance makes clear, they were entitled to be treated with respect, and to expect a constructive approach, having due regard for their own aspirations for the future of their business. In this context, the family's desire to secure the continuation of their business, through a relocation, either within the Nicholson Quarter or elsewhere, was a natural and reasonable aim, and one that should have been central to any meaningful negotiations. The club's evident popularity and public support might also have been expected to be taken into account in gauging what was an appropriate way of responding to the business's needs. Even though the planned development was seen as bringing important benefits to the town, RBWM and their partners were still under a duty to have regard to the impacts on affected owners, and to mitigate such effects where reasonably possible.

107. However, throughout this process, the only relocation site identified by RBWM or Areli that was ever a serious prospect was the Broadway car park unit. Although a handful of other sites were tentatively suggested, it seems fairly clear that little or no effort was expended on any of those other options. The Broadway unit ultimately proved to be unsuitable, leaving the Page family facing the prospect of having to close their business without any acceptable replacement premises in sight. And even after this, the development's promoters failed to renew the search for any other relocation options. The failure of the Authority and their partners, over a period of more than three years, to provide the Pages with any viable relocation options to keep their business alive, demonstrated a lack of genuinely constructive engagement.

108. Furthermore, despite the efforts made by some officers, the repeated failure to provide plans with the level of detail reasonably requested by the Pages, and the delays in exploring the issues and constraints relating to the smoking area, showed a lack of urgency and corporate commitment on the part of both RBWM and Areli. As a result of these failings, it was only after the CPO was made that the Pages were confronted with having no remaining relocation options. It was also only then that they were apparently given any information about the timescale, and the need for an 18-24 month closure period. In the circumstances, the unexplained delay in reaching this point was unacceptable, and a further indication that the Authority and their partners failed to engage constructively, and failed to treat the Pages with proper respect.

109. In reviewing the above matters, it is salient in my view to note that at all times throughout the process, it was open to the development partners to consider making provision for a nightclub with Smokeys' requirements, elsewhere within the Nicholson Quarter development itself. Nothing prevented the developer from exploring such a solution, either by redesigning Zone 4 to enable the Broadway unit to meet the club's needs, or by making provision in one of the scheme's other zones. Nor did anything prevent the Council from seeking this. The submission of revised application plans in

November 2020 presented an opportunity for such an approach. Areli were evidently concerned about the potential incompatibility with new residential apartments. But in planning terms, the town centre is a preferred location for a nightclub; and whilst residential development is a noise-sensitive use, that sensitivity has to be judged in the context of the town centre location, and the support that planning policy gives to mixed uses in that area, including both housing and leisure uses. The Nicholson Quarter would occupy a large proportion of the town centre, and avowedly aims to become the town's 'new heart'. If night-time entertainment uses such as Smokeys are not located there, their options elsewhere would be somewhat limited. There is no evidence that Areli or RBWM seriously considered any other possibilities for the club's relocation within the scheme apart from in the Broadway unit. In the circumstances, this in my view is further evidence of the development partners' failure to engage constructively, to mitigate the effects on the Page family and their nightclub business.

110. Whilst Areli belatedly came forward with a renewed compensation offer, shortly before the present inquiry, it was unacceptable of them to delay doing so until so late in the day. The size of the difference between this offer and their previous one, in May 2020, strongly implies that the original one was unrealistic. Furthermore, in the light of events, it is clear that that original offer was put forward on a 'take it or leave it' basis, rather than as a basis for genuine negotiation. Neither of the offers addressed in any meaningful way the Pages' desire to relocate the business. Although the most recent offer included a sum for fitting out, the costs of such works could not be fully known until a relocation site had been identified. The unnecessary delay in making any serious offer, and the failure of that offer to acknowledge the Pages' strong preference for relocation over extinguishment, reinforces the conclusions that I have come to as to the nature of the engagement process, as set out above.
111. It is possible that the Pages' insistence on an external smoking and break-out area went beyond what some other operators might require. But the point of the exercise was to relocate the existing business, not simply to make generic provision for any nightclub. In their existing premises, Smokeys has the benefit of an external terrace, which is evidently well-used. It was not unreasonable for the owners to want to achieve a like-for-like replacement for that facility.
112. It might also be possible to identify other faults with the Pages' contribution to the process. The family could have been more proactive at times. They could have been clearer about their requirements. They could have engaged their own designer to help steer the process. Had they done these things, they might have been in a better position now. But the Pages were not the instigators of the redevelopment; the job of smoothing the path for that development fell to RBWM and their partners, not to those who happened to lie in the way. The failures of RBWM and Areli to deal with the smoking area issue more expediently, and to give more effective help in exploring other relocation sites, were not caused by any shortcomings on the part of the Page family.
113. In the light of all the above, I conclude that, in their dealings with the Page family, the acquiring authority RBWM and their partners Areli failed to meet the requirements of the CPO Guidance. They failed to engage constructively

with regard to the relocation of Smokeys, or to establish good working relations with the owners, or to treat them with appropriate respect. Had better efforts been made, it is possible that a mutually satisfactory relocation could have been arranged. In the case of Smokeys therefore, it has not been demonstrated that the present proposal for compulsory purchase has been arrived at only as a last resort.

Human rights

114. Article 1 of the First Protocol of the Convention on Human Rights, incorporated into UK law by the Human Rights Act 1998, provides protection for the peaceful enjoyment of possessions. The unexpired term of the Pages' existing lease is such a possession, and the compulsory acquisition of that lease would therefore infringe Lee and Dean Page's rights to the peaceful enjoyment of their property. Such rights under Article 1 are qualified, rather than absolute, and therefore must be weighed against the wider public interest, having regard to the impacts on them and the proportionality of such impacts.

Conclusions on the objection by L & D Page

115. The compulsory acquisition of the Page family's lease on Unit 24a of the Nicholson Centre would in all probability result in the forced closure of Lee and Dean Page's business, Smokeys Nightclub. As things stand, the club has no satisfactory alternative premises into which it could relocate. It has no apparent prospect of finding such premises prior to the date when vacant possession would be required, and no clear prospect within any reasonable timescale, even after that date. The most likely outcome seems to be that the club would not reopen, and the business would cease trading.
116. For the two objectors, this would mean, at the least, the loss of their employment and income. In addition, they would lose the business which has been the focus of their family life for two generations. This would inevitably be a severe blow, with potential adverse consequences for their well-being, and that of their families, including children.
117. Lee and Dean Page would receive compensation. However, given the particular circumstances of their business, there is no guarantee that this would leave them in a position equal to that which they have now.
118. In any event, the potential injury to them has been exacerbated by the unsatisfactory way that they have been treated during the gestation of the proposed development and throughout the CPO process. That process has been largely characterised, on the part of the Order's promoters, by a lack of care for the Pages' legitimate concerns, a lack of constructive or meaningful negotiation, and a failure to take opportunities to mitigate the impact on them. From the way that these matters were handled, the compulsory purchase of the Pages' interest appears to have been treated as inevitable from the start, rather than a last resort.
119. For Maidenhead, the closure of Smokeys Nightclub would mean the loss of a leisure facility and performance venue which is evidently valued by many and seen as an asset to the town.
120. For the reasons that I have identified elsewhere in this decision, I am satisfied that the development of the Nicholson Quarter would bring substantial

benefits to the town, and for the Borough as a whole. However, the harm that Lee and Dean Page would suffer due to the compulsory acquisition of their business would be severe. It has not been demonstrated that the public benefits of the development could not be gained without the need for such a degree of harm to these objectors. In these circumstances, the injury caused to Lee and Dean Page, as a result of the interference with their rights of ownership, would be disproportionate to the benefits.

121. I conclude that a compelling case for the compulsory acquisition of Smokeys Nightclub has not been shown.

Objection by Aegon UK Property Fund Ltd

The objection

122. Aegon UK Property Fund Limited holds long leases on the 8-storey office block Nicholson House, and two floors of the existing multi-storey car park. The unexpired terms are 967 years and 112 years respectively.

123. The CPO proposes to compulsorily acquire Aegon's interests in the multi-storey car park (Plots Nos 1/51 and 2/3 on the Order Map). In the case of Nicholson House itself, the Order proposes to acquire just the basement (Plot B1), which houses electricity switchgear and also serves parts of the shopping centre. The loss of the basement, and its severance from the remainder of the building, have not been objected to.

124. In relation to the above-ground parts of Nicholson House (Plots Nos 101, 102 and 173), the Order proposes to acquire new rights, in respect of access and general construction, oversailing, scaffolding and hoardings, service media, and party wall works.

125. The grounds of objection are discussed below.

Grounds

Exclusion of Nicholson House

126. Aegon objects to the fact that the Order does not propose to acquire Nicholson House as a whole, other than the basement. In the objector's view the proposed Nicholson Quarter development should include the complete demolition and redevelopment of the existing office building. From the start, Aegon has expressed a willingness to sell its leasehold interest, and discussions were held with Areli on this basis. The company maintains that the inclusion of the building would avoid any problems during construction and result in a better scheme.

127. I accept that the inclusion of Nicholson House might potentially have had some advantages for the development; possibly including the ability to deliver additional public benefits, although the nature and extent of any such advantages have not been demonstrated. However, the scheme that is relied on to justify the CPO is the one for which planning permission has been granted, and that scheme excludes all the above-ground parts of Nicholson House. There is no evidence that the acquisition of the whole building is necessary to deliver the Nicholson Quarter as currently permitted.

128. Furthermore, for the reasons set out elsewhere in this decision, I have found that the permitted scheme would accord with the area's planning framework,

and deliver significant benefits to economic, social and environmental well-being. It is therefore not necessary to extend the development, by the inclusion of Nicholson House, to satisfy this requirement.

129. From the objector's point of view, the acquisition of Nicholson House by Denhead SARL would relieve them of their concerns regarding the impacts of construction work on the building itself and its occupiers, and also regarding any on-going effects on future lettings. But these are matters which can be taken into account in the assessment of compensation.
130. It follows therefore that a modification to the CPO to require the inclusion of the whole of Nicholson House cannot be justified. Nor would it be reasonable to refuse to confirm the Order on this basis.

Lack of negotiation

131. The basis of the objection on this ground is primarily that no financial consideration was offered to Aegon as compensation, either for the new rights sought, or for the surrender of the lease on their parking spaces. The objector also alleges a lack of clear information about the terms of the CPO prior to the date when it became formally made.
132. From the evidence provided, it appears that discussions between Aegon and Areli Real Estate commenced in early 2019, at the initiative of Aegon's agent Oxygen. In these initial meetings and discussions, the main focus was on the possibility that Denhead SARL might wish to purchase Nicholson House by private treaty. That possibility continued to be discussed intermittently over the next few years, and evidently Aegon remained keen in principle throughout, but eventually Denhead chose not to proceed with any acquisition of the building.
133. According to The Authority's summary²⁰, a proposal for the temporary and permanent relocation of Aegon's parking spaces was first made in an email from Areli to Oxygen on 31 January 2020, and this was rejected. The next discussion on that matter took place at a meeting on 3 February 2021, when Areli informed Aegon that a CPO was being considered. As well as car parking, issues relating to construction impacts, and temporary access for Nicholson House were discussed, and a suggestion was made by Areli for some form of co-operation agreement on these issues. Following some further correspondence, the idea of a co-operation agreement was raised again in an email from Areli on 4 May 2021. This apparently received a cautious but generally welcoming response in an email from Oxygen on 2 July 2021, and was discussed at a meeting shortly afterwards on 21 July 2021.
134. At a further meeting on 2 August 2021, Areli tabled a draft Heads of Terms, on a 'without prejudice' basis. The document has not been produced in evidence to the present inquiry, but it is not in dispute that it included proposals for the surrender of Aegon's car parking lease, the provision of replacement spaces, and the granting of construction rights over Nicholson House. In an email dated 13 September 2021, Aegon rejected these terms and sought to return the discussion to a sale of the building. At a further meeting on 22 September 2021, and some subsequent phone calls and emails over the next few months, the parties maintained and re-stated these

²⁰ Doc H39, Negotiation Record Sheet

respective positions. This remained the position up to the point when the CPO was made, on 22 February 2022.

135. Since then, discussions have taken place with a somewhat increased frequency. According to the Authority's note²¹, Areli have provided further information including demolition and delivery strategy reports; they have put forward proposals for a rent guarantee scheme; and to mitigate any losses, by locating their contractors' technical personnel in Nicholson House during the construction period; and they have offered to collaborate with Aegon over both parties' respective plans for works to the building. Aegon have rejected the rent guarantee scheme, and maintained their preference for an outright sale of the building. The evidence on these matters does not appear to be disputed.
136. I agree that it might have been better if the Heads of Terms had included a financial proposal of some sort, even if nominal, to recognise that what was being sought at that stage was a voluntary agreement that would benefit primarily Areli and their partners. It might also have benefited from including more detail regarding the proposed new rights, and about the intended works affecting Nicholson House. But nevertheless, the document was by all accounts a draft, and it was open to Aegon to propose amendments or additions. In putting forward their proposal, Areli had shown a willingness to negotiate an agreement, which with reasonable good will on both sides could have avoided the need for powers of compulsion in this case. In the light of Aegon's apparent refusal to consider anything other than a sale, Areli and RBWM had no choice but to pursue the CPO route in respect of the particular plots covered by Aegon's interests.
137. I note that Aegon's letter to RBWM's Chief Executive in July 2021 is said to have gone unanswered, but there is equally no evidence that the letter was followed up by Aegon themselves. This does not change my view as to where the responsibility lies for the failure of these negotiations.
138. In relation to this objection therefore, I am satisfied that the Authority and their partners took reasonable steps to acquire the necessary rights by agreement, and that compulsory purchase was used only as a last resort.

Effects on the structural stability of Nicholson House

139. Nicholson House and the Nicholson Shopping Centre are physically attached to each other, and the proposed development would require them to be separated. The rights conferred by the CPO would include a right to demolish adjacent structures and provide new temporary and permanent support.
140. However, it is common ground that Nicholson House was constructed as a stand-alone building, before the shopping centre. The written and oral evidence of the Authority's construction witness Tim Cole makes clear that he is now satisfied that neither building depends on the other for vertical support. This evidence is supported by a demolition strategy report and photographs. There is no technical evidence to the contrary.
141. This being so, there seems no reason to foresee any particular technical difficulties in separating the shopping centre from Nicholson House, and then carrying out the demolition of the shopping centre. It follows that the

²¹ Doc H39, Negotiation Record Sheet

granting of the proposed new rights, including those for party wall operations and general construction, would not appear likely to pose any risk to Nicholson House's structural integrity or stability.

142. As far as I am aware, all existing legal protections and remedies against damage or injury would continue to apply.

143. I therefore find no basis for refusing to confirm the Order on this ground.

Pedestrian access to Nicholson House during construction

144. During the construction period, the existing pedestrian access to Nicholson House, through the shopping centre, would become part of a construction site where demolition and building work would need to take place. Occupiers and visitors would have to pass through that area to gain access.

145. However, Mr Cole's evidence shows how safe access could be provided, using an enclosed, rigid, protective steel corridor. This could be fitted out and finished to a specification to be agreed. From the examples provided, this appears to offer a safe, tried and tested solution. All existing building site safety regulations would continue to apply.

146. I have no doubt that users would suffer some temporary reduction in amenity, but the degree of inconvenience, would be relatively minor. The objection on this ground does not justify withholding confirmation of the Order.

Environmental impacts on Nicholson House during construction

147. During the construction period, building works would be going on around Nicholson House on three sides. Occupiers and visitors would be likely to experience some noise, vibration and dust from construction activities. Views from the building's windows would also be dominated for a while by these activities. To a degree, these impacts could be controlled and mitigated, as set out in the Construction Environmental Management Plan, but even so, I agree it is likely that users of Nicholson House would suffer some reduction of amenity for the duration of the works.

148. However, these effects are largely ones that would arise from the construction of the development anyway, irrespective of the rights that would be gained through the CPO. The confirmation of the Order would enable some limited additional construction works that could not otherwise take place, and these would include some works to Nicholson House itself; including the severing of the connections with the shopping centre, and the recladding and alterations to the ground floor walls. But in the context of all the other works taking place in the building's vicinity, the works that are proposed to Nicholson House would be a relatively small element. The additional environmental impacts resulting from the rights provided by the Order would thus be minor.

149. In any event, temporary noise and visual impacts are a normal part of any major construction project, and are taken into account in the planning process. Noise or other impacts amounting to a statutory nuisance would be preventable under the Environmental Protection Act 1990.

150. None of these matters therefore provides any proper basis for refusing to confirm the Order.

Effects on car parking for Nicholson House

151. Aegon's existing leased parking spaces would all be compulsorily acquired. But during construction, replacement parking of a like-for-like number is proposed at the Hines Meadow car park, which is only a fairly short walk away. On completion of the development, permanent re-provision is proposed in the new car park within the development, which would be a similar distance from Nicholson House as at present.
152. Some inconvenience would be caused to tenants of Nicholson House as a result of the greater distance of the temporary provision. But if this were to result in Aegon incurring a loss of rental income, such loss would appear to be capable of qualifying for compensation. No significant detriment seems likely to arise from the proposed permanent parking arrangements following completion.
153. Neither of these proposed temporary or permanent arrangements is guaranteed by way of planning conditions or obligations. However an agreement was evidently offered and turned down. And be that as it may, in the event of any failure by the developer to adhere to the stated proposals, resulting in loss due to a reduction in value, this would again be recoverable through the compensation process.

Fire escape and emergency access

154. Provisions for maintaining fire and emergency access, both during construction and after, have been set out in some detail in the evidence of Mr Cole and Mr Adams. These proposals seem to me well thought out and I have no reason to doubt their adequacy. The developer and contractor would in any event be bound by all relevant safety legislation.

Effects on lettings at Nicholson House

155. On my visit to Nicholson House, I saw that several of the office suites are currently unoccupied and on the market for re-letting. The prospect of major building works may be a factor in the current downturn in the level of occupancy, but so could other factors. It is acknowledged that, when construction starts, new lettings are likely to be adversely affected, albeit that on the eventual completion of the works, the improved external environment may mean that the eventual lasting impact is a positive one.
156. But losses attributable to the development will again generally fall within the scope of the compensation provisions. There seems no reason to doubt that any such losses relating to the likely temporary adverse impact on new lettings can if necessary be dealt with in this way.

Effects on NHS services

157. Part of the Nicholson House office space is let to the Berkshire Healthcare NHS Foundation Trust for the provision of mental health services. The users of those services may include some who are vulnerable or have special needs.
158. However, there is no evidence that the Trust's services would be affected. Building access would be maintained. Parking would continue to be provided. Whilst this would involve a longer walk during the construction period, there is no evidence that this would be a particular problem for patients of this

service. Disabled parking is proposed to be maintained for those who need it. Despite the likely impact on environmental conditions within the building during the construction period, there is no evidence that it would become unusable for the provision of health services. The Trust has not objected to the CPO.

Effects on future residential conversion

159. Prior approval exists for the conversion of Nicholson House to 37 residential apartments. Although there appears to be no immediate intention to implement this permission, I appreciate the desire of the owners to preserve the benefit of it.
160. During construction the environment of the building would be affected in the ways that I have identified, and this would be likely to have some impact on the prospects of marketing residential units during that period. But after completion, the overall effect on the surroundings would be an enhancement compared to the existing situation. The likelihood of any detrimental financial impact would therefore depend to a large extent on the timing of the residential conversion, which would be a decision which would be within the building owner's own control.
161. In any event, any impact in this respect would largely relate to the effects of the development itself, and not those of the CPO.

Viability, funding, and impediments to delivery of the development

162. The matters raised by Aegon UK in relation to these issues are discussed in paragraphs 43-49 of this decision. For the reasons explained there, I am satisfied that, if the Order were confirmed, the development would have a reasonable prospect of delivery.

Planning policy and affordable housing

163. The matters raised by the objector in relation to these issues are likewise discussed elsewhere in this decision, at paragraphs 39-42. For the reasons explained therein, I am satisfied that the development accords with the policy framework for the area.

State aid considerations

164. When RBWM entered into the development and Land Swap agreements with Denhead SARL, that company already owned the freehold of the majority of the Order Lands. There would therefore have been little point in the Council attempting to enter into any similar agreements relating to this site with any other party. In these circumstances, the Council's preference for Denhead SARL clearly did not have the effect of denying an opportunity to any other potential bidders, nor did it distort or inhibit fair competition.

Human rights

165. As with any CPO, the confirmation of the present Order would interfere with Aegon's rights under Article 1 of the First Protocol. But in view of the conclusions that I have come to above, the adverse impacts on them would be relatively minor, and for the most part any financial losses would qualify for compensation. The proposed scheme could not be developed without undertaking works to, or within the demise of Nicholson House, or without the

demolition of the existing car park. The effect on the objector would therefore not be disproportionate. In my judgement, the infringement with their rights of ownership would in this case be lawfully outweighed by the scheme's public benefits.

Conclusion on the objection by Aegon UK Property Fund Ltd

166. I conclude that none of the matters raised in the objection by Aegon UK, either individually or collectively, are of sufficient weight to outweigh the public benefits that would be realised through the proposed Nicholson Quarter development. The objection does not provide sufficient substantiated grounds to justify withholding confirmation of the Order.

Objection by WH Smith Retail Holdings Limited

The objection

167. WH Smith holds a lease on the retail premises known as Units 16-22 (evens), on two floors of the Nicholsons Shopping Centre (plots 35 and 1/19 on the Order Map). The lease runs to July 2025. The company is also listed in the Order Schedule as the occupier of a rear yard behind these premises (plot 37), and as one of the occupiers of the main first floor service deck (plot 1/9).

168. The CPO proposes to acquire all of these interests.

Grounds

Uncertainty over reprovion or relocation

169. WH Smith states that it wishes to retain a presence in Maidenhead, but has been unable to identify any suitable premises which will be available in time for the vacant possession date. No offer has been made to provide a new unit for WH Smith in the proposed development. No guarantee has been given as to whether the scheme will include any unit matching the company's requirements, nor whether any such unit would be made available to them.

170. The Authority says that it has suggested various options which are available, or will become so, but acknowledges that these were found unsuitable by the objector. Continuing assistance is said to have been offered. The Nicholson Quarter development will provide new retail units, and it is likely that suitable provision can be made.

171. I appreciate that the prospect of the scheme creates uncertainty, and I can understand the objector's desire for a greater degree of reassurance. Clearly it would be to the advantage of all parties if a relocation site could be identified at an early stage. However, a range of sizes of retail units is planned in the proposed scheme, and it seems probable that there would be suitable options for a WH Smith shop within the development. Even if not, when the development opened there would be likely to be some movement amongst other retailers in the town, and thus other opportunities might well arise at that stage.

172. The situation that these objectors find themselves in is therefore different from that of Smokeys Nightclub, in that there is a reasonable prospect of suitable provision becoming available, without any apparent need for changes to the proposed scheme. I am not in a position to require any undertakings from any party on a commercial matter of this nature, nor can I make a

decision that is conditional upon such an arrangement. On balance, the lack of certainty for WH Smith, regarding reprovision or relocation, does not warrant a refusal to confirm the Order.

Loss of the Post Office

173. The Post Office counter within the objector's existing store is an important public facility, and if it were lost due to the proposed development, that would be a big loss for the town, causing inconvenience to many. However, there is no suggestion that the Post Office service in Maidenhead is tied to operating only through a branch of WH Smith. In the event that WH Smith was unable to relocate, it seems likely that alternative provision could be made, either independently or in association with another retailer.

Human rights

174. The loss of the existing lease, two years ahead of its natural expiry, would infringe the objector's rights to peaceful enjoyment of their possessions. But the financial loss would qualify for compensation, and there is no suggestion that either the company or any other person would suffer hardship. The proposed scheme could not be developed without the demolition of the existing shopping centre. Overall, the injury to the company's rights would be lawfully outweighed by the proposed development's benefits to the general public.

Conclusion on the objection by WH Smith Retail Holdings Ltd

175. Any losses suffered by the objector would be likely to be compensated, and in the circumstances, the harm suffered would not be so great as to justify withholding confirmation of the Order.

Objection by Lloyds Bank PLC

The objection

176. Lloyds Bank PLC is the leaseholder of 45 High Street, and by virtue of its lease the Bank benefits from rights of way over the yard to the rear of that property (plot 131 on the Order Map) and the accessway known as Bankside (plot 132). The lease runs to March 2027.

177. The CPO seeks new rights over both of these plots, for access and general construction, oversailing, and future access and maintenance. In the case of plot 132, rights for scaffolding and plant are also sought.

Grounds

Obstruction of access and emergency escape

178. The objector states that the rear yard and Bankside are needed as part of a designated fire and emergency escape route for staff and customers. The Bank has a legal requirement to ensure that this route is kept clear. Any obstruction to essential emergency routes by scaffolding, plant, or construction works could create a danger to the public and potentially result in the Bank needing to close.

179. In addition, these areas are said to be used for access to the Bank, for maintenance, by tradesmen, and for refuse collection. Obstruction of access for these purposes would cause inconvenience and operational difficulties.

180. However, from the evidence presented to the inquiry, it appears that any existing rights held by the objector or others over the land in question would not be extinguished, but rather the new rights which are sought under the CPO would sit alongside those rights. In any event, the developer and contractors would be bound by relevant site safety, fire safety and building regulations. In the extreme, compensation would be likely to be claimable for any loss of revenue suffered by the Bank.

181. In any event, the purpose of including these two plots appears to be principally for the purpose of carrying out a comprehensive upgrading of pavings, surfacing and hard landscaping treatments in the areas around the periphery of the development. This purpose would have long-term public benefits to be weighed against any temporary impacts.

Use of the rear access for bin storage

182. The objector states that use is made of the rear yard and Bankside for storing refuse bins. No evidence has been presented of any rights for use other than for access, but in any event, it seems likely that any interference with such use would be likely to be of relatively short duration.

Security

183. The objector raises a concern that the erection of scaffolding could give access to upstairs windows or flat roofs. However, no works are proposed to the Bank itself or other adjoining properties in High Street or Queen Street, so any scaffolding that may be required seems unlikely to be directly adjacent to the Bank premises.

Lack of negotiation

184. Discussions have evidently taken place, and a draft agreement prepared by the objector is under consideration. I appreciate that the objector would have preferred to see further progress on this, but the objector acknowledges that the developer has shown at least some willingness to engage.

Conclusion on the objection by Lloyds Bank PLC

185. The likelihood of significant harm being caused to the objector as a result of the new rights sought seems fairly remote. There is also a reasonable prospect of an agreement which would further reduce that risk. Balanced against the benefits of the development, the potential for harm is clearly outweighed. A refusal to confirm the Order on this basis would therefore not be justified.

Objection by Matthew James

The objection

186. Mr James owns the leasehold of one of the residential apartments at Cresset Court. The building as a whole is plot 120 on the Order Map.

187. The Order seeks to acquire new rights over Cresset Court, in relation to construction and general access, oversailing, scaffolding and party wall matters.

Grounds

Overlooking and loss of outlook

188. Mr James is concerned about a perceived loss of outlook and privacy at his apartment, arising from the proposed development when completed. However, matters relating to these issues have already been considered within the planning process, and were taken into account in the Council's decision to grant planning permission for the development.
189. The confirmation of the CPO would facilitate the carrying out of the development, but would not change or exacerbate its impacts on the privacy or outlook of neighbouring properties such as the objector's; those impacts would remain as already approved. The objection on these grounds therefore relates essentially to the merits of the original planning decision, rather than to the effects of the proposed CPO.
190. The decision that is now required, as to whether to confirm the CPO, is not an opportunity to reconsider those planning merits. As such, the objection on this ground is not relevant to my decision.

Loss of light

191. Mr James also states that the development would cause a loss of light to the bedroom of his apartment, reducing the proportion that is well-lit from 49% to 33%. In this respect, the Authority accepts that the property in question is presumed to have a right to light, for which a claim for compensation may be made. However, in this case, such rights are said to have been reserved to the owner of the freehold²².
192. In so far as this ground of objection relates to a general impact on light, as opposed to any legal rights of light, then the objection is again concerned with the merits of the original planning application, which has already been determined, and not the merits of the Order which is now under consideration.

Noise, dust and disturbance

193. As at Nicholson House, Cresset Court is surrounded by the Order Lands on three sides, and the apartments there would be likely to experience some noise, dust and disturbance during the construction phase. Whilst these impacts could be mitigated to a degree by the measures set out in the Construction Environmental Management Plan, it is likely that the residual effects would be noticeable to occupiers during the period of the works. However, these impacts have been taken into account during the planning process, and were considered not to outweigh the development's benefits.
194. The new rights sought under the present CPO would provide for the siting of scaffolding on land belonging to Cresset Court. This could potentially create some additional noise and disturbance during erection and dismantling, but these stages would be likely to be limited in duration. Scaffolding would not be expected to generate dust.
195. The Order would also authorise party wall works and general access and construction. But given that Cresset Court lies outside the planning

²² Doc H41: 'Compensation Eligibility of Objectors' schedule

application boundary, and the permission therefore does not authorise any actual development on Cresset Court land, it seems likely that any works undertaken at that property as a result of these particular rights would be minor.

196. In addition, the Order would also permit oversailing by cranes, but this would not normally be expected to give rise to any of the impacts which the objector is concerned about.
197. Consequently, in the context of the Nicholson Quarter development as a whole, any additional works in the vicinity of Cresset Court resulting from the confirmation of the CPO would be, at most, a minor additional element. The additional environmental impacts in terms of noise, dust and disturbance attributable to the Order would therefore be insignificant.

Conclusion on the objection by M James

198. I conclude that none of the matters raised in this objection provides any substantive basis for refusing to confirm the Order.

Objection by Robert Harding

The objection

199. Mr Harding has a 3-year sub-lease of part of the third floor office space at Nicholson House. On the Order Map this is part of plot 173. He is also listed as an occupier of part of plot 1/51, which is the first floor of the multi-storey car park.
200. The CPO proposes to compulsorily acquire all interests in the multi-storey car park. In relation to Nicholson House it proposes to acquire the basement, together with new rights in respect of access and general construction, oversailing, scaffolding and hoardings, service media, and party wall works.

Grounds

201. Mr Harding's objection is that in his view the Nicholson Shopping Centre and car park do not need to be redeveloped, and that to do so would be a waste of money. He also considers that Nicholson House provides good office accommodation.
202. My findings on the existing buildings, and the benefits of the proposed redevelopment, are set out in paragraphs 21-38 of this decision. To a degree, I agree with this objector, in so far as I have found that the need for redevelopment is not so overriding that it outweighs all of the objections before me. But nonetheless, the benefits of the scheme now proposed are substantial, and these benefits are recognised in my decision.
203. The development, were it to proceed, would be funded wholly by private investment. That is not to say that no public expenditure has been incurred; clearly the Council has put a good deal of time and manpower into the CPO and associated legal agreements. But the costs of construction and the risks associated with that process would be borne by the private sector, and as I have commented elsewhere, the scale of the investment involved, and the value to the local and national economy, seems to me to count in favour of the scheme.

204. I agree that the office space offered by Nicholson House serves an important function in maintaining some variation in the type, quality and cost of offices available in Maidenhead. In the proposed scheme, the existing office building is proposed to be retained, and its setting enhanced. Consequently, the overall effect on Nicholson House would be a beneficial one.

Conclusion on the objection by R Harding

205. The matters raised do not cause me to depart from my earlier conclusions, and thus do not warrant refusing the confirmation of the Order.

Objection by Brock House Investments Limited

The objection

206. Brock House Investments Limited owns long leases on nine flats at 57 High Street, which is numbered plot No 126 on the Order Map. The company is also listed as an occupier of parking spaces forming part of the first floor service yard of the Nicholson Shopping Centre, plot No 1/38.

207. The CPO proposes to acquire all interests in the service yard. It is also proposed to take rights over Brock House land in respect of access and general construction, oversailing, scaffolding, plant, fire escape and party walls.

Grounds

Car parking

208. The objection relates to the loss of the existing parking spaces in the multi-storey car park which are leased by the objector and allocated to occupiers of the flats at Brock House. These would be compulsorily acquired.

209. However, during construction, replacement parking of a like-for-like number is proposed at the Hines Meadow car park, which is a short walk away. On completion of the development, permanent reprovision is proposed in the new car park within the development, which would be approximately 100m from Brock House.

210. Some inconvenience would be caused to occupiers of Brock House as a result of the greater distance of the temporary provision. But if this were to result in the objector incurring a temporary loss of rental income, such loss would appear to be liable for compensation. No significant detriment seems likely to arise from the proposed permanent arrangements following completion.

211. Neither of these proposed temporary or permanent arrangements is guaranteed by way of planning conditions or obligations. However, in the event of any failure by the developer to adhere to the stated proposals, resulting in loss due to a reduction in value, this would again be recoverable through the compensation process.

Conclusion on objection by Brock House Investments Ltd

212. Any injurious effect on the objector arising from the changes to car parking arrangements is capable of being remedied by compensation. The objection therefore does not give rise to any justifiable reason to withhold confirmation of the Order.

Objection by Telefonica UK Limited

The objection

213. Telefonica UK Limited is the leaseholder of retail premises at 61 High Street. The rear part of the premises is identified as plot 124 on the Order Map.
214. The CPO seeks to acquire rights over this rear part of the property, for access and general construction, oversailing, scaffolding, plant, and fire escape.

Grounds

Effects on existing rights of way, fire escape and support

215. Telefonica UK states that 61 High Street benefits from rights of way, fire escape, and support from adjoining land and buildings, including parts of the Nicholson Shopping Centre. These adjoining plots are to be redeveloped as part of the proposed development, and existing rights over them would be extinguished by the CPO.
216. However, the evidence produced to the inquiry by Mr Conboy, Mr Cole and Mr Adams all explains at some length how it is proposed to provide a new fire escape for No 61 and other adjoining properties, replacing the existing arrangements; and also to widen and upgrade the existing network of shared rear access passages, and incorporate these into a proposed new public realm area as part of the development. This evidence also shows how access and fire escape to the objector's property can be maintained throughout the demolition and construction process. To my mind, the effect of these works would be to achieve an improvement over the existing arrangements serving the property.
217. The rights which are sought under the Order all appear to me to be necessary for the purpose of carrying out these alterations to the existing rear access and fire escapes. Such rights would only be required during the construction of these particular works, and their effect would be limited to that period. The new rights required are also proposed to be confined to a small part of the premises. I am therefore satisfied that the new rights sought are no more than what is strictly necessary in this case.
218. The provision of the proposed works serving No 61 does not appear to be secured by way of planning conditions or planning obligations, but nevertheless it seems clear that the developer would be obligated to ensure satisfactory provision for the property by virtue of other relevant legislative provisions. In any event, any failure in this respect would be likely to give rise to compensation.

Effects on the operation of the objector's business

219. The objector is concerned about a lack of clarity as to the extent of what would be permitted by the new rights, and the potential effects on the daily running of their business.
220. Having regard to the matters set out above, I consider that in this case the rights in question are sufficiently clear. For the reasons already stated, I am also satisfied that they are necessary, and therefore I do not consider them unduly onerous.

221. The right which is sought in relation to general construction states that exclusive possession will not be required of any part of the land for that purpose. Whilst there is no corresponding provision in relation to the other rights that are sought, there seems no reason why the exercise of any of the rights in question should be likely to result in the tenant being excluded from the premises to such an extent as to interfere with the running of their retail business.

Lack of negotiations

222. The objector states that, prior to the start of the inquiry, there was limited communication from either the acquiring authority or the developer, and no opportunity for negotiation. Latterly, a draft agreement had been received, but as at 27 October 2022, the terms as drafted were not considered acceptable.

223. The alleged lack of engagement is disputed by the Authority and Areli, who refer to discussions and correspondence with an agent acting for Telefonica, in March, August and September 2022, and also with the freeholder of the building.

224. I agree that the lateness of the draft agreement was poor practice. I am not able to judge the contents of the agreement, as the draft is not before me, but it appears that the discussions on this are on-going, and that some prospect of concluding it is seen as a possibility by both parties. Overall, I consider that the steps taken have been reasonable.

Funding for the development

225. My conclusions on the apparent availability of funds to carry out the Nicholson Quarter development, and related issues, are contained at paragraphs 43-49 of this decision. For the reasons already explained, I am satisfied that, if the Order were confirmed, the development would have a reasonable prospect of delivery.

Conclusion on the objection by Telefonica UK Ltd

226. I conclude that the matters raised in the objection by Telefonica UK Limited do not outweigh the benefits of the proposed development, and therefore do not justify refusing confirmation of the Order.

Objection by McDonald's Global Markets LLC and Others

The objection

227. The objection is made by McDonald's Global Markets LLC, McDonald's Restaurants Limited and APPT Corporation. These parties include the leaseholders and franchisee of the existing restaurant premises at 63-67 High Street. Parts of these premises are identified on the Order Map as plots 121, 122 and 123.

228. In the case of plot 123, the CPO seeks rights for access and general construction, oversailing, scaffolding, plant and fire escape. For plots 121 and 122, the Order seeks rights of oversailing only.

229. McDonald's Restaurants Limited is also listed as an occupier of parking spaces within the shopping centre service deck (plot 1/38), and the objectors

collectively state that they have rights over various parts of the shopping centre and surrounding land, including plots 68, 69, 86 and 1/48, for access, servicing, fire escape and support. In all of these plots, all interests are proposed to be acquired, and the buildings demolished.

Grounds

Servicing arrangements

230. The objectors raise concerns regarding the loss of their use of the shopping centre's service deck and goods lift. In the proposed development, loading and unloading for High Street units would take place from Nicholson Lane, using trollies. This would be at a greater distance from the objectors' premises than at present. However, the merits of this arrangement have been considered through the planning process and found acceptable, and the extinguishment of the objectors' rights with regard to the existing service deck are consistent with the planning permission. In the event that the resulting loss of convenience were to result in a reduction in the value of the objector's interest, or other financial loss, this would be a matter for compensation.

Fire escape

231. The objectors express concerns about the need to maintain a safe means of fire escape at all times. However, the evidence presented at the inquiry on behalf of the Authority and the developer explains how it is proposed to maintain the escape route from the objector's premises, during construction and afterwards, with only minor alterations to the existing arrangements. The rights that are sought appear to me to be the minimum that is needed to ensure that these works can take place.

Services and utilities

232. The objectors are concerned to maintain full services and utilities during construction. However, no specific rights in respect of these matters are proposed in the CPO, and in this regard therefore, the objectors' existing rights would be unaffected.

Hours of work

233. The objectors seek assurances that access to the restaurant for construction purposes would be limited to times outside of the restaurant's trading hours. The Order would permit access to the land for general construction purposes at all times. However, trading losses due to interference with business operations would be likely to be liable for compensation.

Boundary treatments

234. The objectors raise a concern regarding boundary treatments. A right to carry out boundary treatment works would be included in the provisions for general construction. However, the rights provided through the CPO would only remain in force for as long as needed to carry out the development. Nothing in the Order would prevent those with interests in the property from changing or replacing any boundary treatments after the completion of the development, subject to normal planning controls.

Construction impacts

235. The objectors suggest a need for protective provisions and safeguards during construction. However, matters of site safety would be the responsibility of the contractor. Matters of general environmental impact were considered during the planning process, and controls put in place through a Construction Environmental Management Plan. Those matters cannot be revisited now in the context of the present CPO.

Access and parking in the wider locality

236. Similar considerations apply to the issues raised by the objectors regarding access and public car parking in the wider area. These matters were also considered in the grant of planning permission. They are not affected by the CPO, and they have no bearing on my decision whether to confirm the Order.

Conclusion on the objection by McDonalds Global Markets LLC and Others

237. For the reasons given above, I find nothing in the matters raised in the objection by these objectors to justify withholding confirmation of the Order.

Objection by Tom Fraser

The objection

238. Mr Fraser represents the owners of Nos 34 and 34A Queen Street. Part of the rear yard attached to these properties is identified as plot 158 on the Order Map. Also attached to the property is part of the shared private access known as Queens Lane, which is numbered plot 157.

239. In the case of plot 158, the CPO seeks rights of access and general construction, oversailing, and access for the purpose of constructing temporary access to adjoining properties. At plot 157, the Order seeks these same rights, and in addition rights for scaffolding, plant and deliveries.

Grounds

Loss of light

240. The objection is stated to be to any works that affect the property including rights of light. In so far as the objection relates to rights of light, if such a right is proven, a remedy is available through compensation. If a right of light is not established, the objection on this ground appears to be primarily a planning matter, unrelated to the rights and acquisitions proposed in the present Order. No other specific grounds of objection are identified.

Conclusion on the objection by T Fraser

241. In the circumstances, I find nothing in the objection to justify withholding confirmation of the Order.

Objection by MNK Estates (UK) Limited

The objection

242. The objector refers to premises at 33-37 Queen Street. The CPO contains no proposals for the acquisition of any interests in this property, nor for the creation of any new rights over the property.

Grounds

Loss of light

243. The objection is stated to relate to rights of light. In so far as this ground is concerned, if such a right is proven, a remedy is again available through compensation. If the right to light is not established, the objection on this ground is a planning matter, unrelated to the present Order for compulsory purchase.

Disruption to businesses and residents

244. The objection refers also to long-term disruption due to the scale of the development. Again, this objection appears to be directed at the development's planning merits rather than those of the CPO.

Conclusion on the objection by MNK Estates (UK) Ltd

245. The objection provides no substantive grounds to warrant the non-confirmation of the Order.

INSPECTOR'S OVERALL CONCLUSIONS

246. For the reasons set out above, I am satisfied that the redevelopment of the Order Lands, in accordance with the planning permission for the Nicholson Quarter mixed-use scheme, would accord with the BLP's policy framework for the area, and would bring significant benefits for the social, economic and environmental well-being of the town. I have found no reason to doubt that the development is financially viable, and free from impediments, and that the necessary resources are available; as such, I accept that the scheme would have a good prospect of proceeding.
247. However, I have found that the compulsory acquisition of the lease for Smokeys Nightclub would be likely to result in the club's closure, contrary to the wishes of its owners, Lee and Dean Page. The nightclub has no apparent prospect of finding satisfactory alternative premises within a reasonable timescale, and there is a consequent likelihood that the business would be forced to cease trading. The impact on the Page brothers would be particularly severe, because of the club's historic central role in their family life, and also because of their own personal commitment to it. Moreover, the closure of Smokeys would also mean the loss of a valued facility for the town.
248. This position could potentially have been avoided, had there been a proper degree of constructive engagement on the part of the acquiring authority and its partners, and a genuine willingness to explore options for the club's relocation; including all options within the proposed scheme itself that might have been able to meet the club's reasonable requirements. The failure to pursue meaningful negotiations with the Page family means that, with regard to their particular interest, it does not appear that compulsory purchase is being proposed only as a last resort.
249. As a result, despite the proposed development's acknowledged public benefits, it has not been demonstrated that those benefits could not equally be gained without the likely need for Smokeys to close, and without the consequential adverse impacts for both the objectors and the town. In these circumstances, the interference with Lee and Dean Page's human rights would be disproportionate.

250. With regard to the other remaining objections to the CPO, I have found no others that carry sufficient weight as to justify refusing to confirm the proposed Order. But nevertheless, the objection by Lee and Dean Page carries enough weight on its own for me to conclude that in this case this must be the right and necessary outcome.
251. I fully accept that the benefits of the Nicholson Quarter scheme can only be achieved on this particular site, and that they can only be realised through a fully comprehensive development. There is no realistic prospect of any alternative scheme that would allow Smokeys Nightclub to remain in situ. And I am not in any doubt that any obstacle to the delivery of the present scheme would represent a significant setback to Maidenhead's regeneration. But these considerations do not outweigh my findings that the effects of the present Order on the objectors Lee and Dean Page would be disproportionate; and that the Order has not been shown to be a last resort.
252. I conclude that it has not been demonstrated that the confirmation of the Order is justified by a compelling case in the public interest.
253. The Order is therefore not confirmed.

J Felgate

INSPECTOR

APPEARANCES

FOR THE ACQUIRING AUTHORITY:

James Pereira KC, assisted by Daisy Noble of Counsel
(Instructed by Dentons LLP)

They called:

Ian Brazier-Dubber
MRICS, BSC(Hons), PGDipTP, MSc

Marcus Adams
DipArch, MA Urban Design, RIBA,
ARB

Tim Cole
HNC Building Construction

Richard Garside
BSc(Hons), MRICS, Registered Valuer

Peter Twemlow
BA(Hons), MSc, MRTPI

Will Robinson
MSc, MRICS

David Conboy
MSc MRICS

Managing director, RBWM Property Company

Managing Partner, JTP Architects

Project Manager, Blue Sky Building Ltd

Director, Newsteer Real Estate Advisers

Director, DP9 Planning Consultancy

Development Director, Areli Real Estate

Director, Newsteer Real Estate Advisers

FOR L & D PAGE:

Annabel Graham Paul, of Counsel
(Instructed by Blandy & Blandy)

She called:

Dean Page

Lee Page

Joint owner of Smokeys Nightclub

Joint owner of Smokeys Nightclub

OTHER INTERESTED PERSONS:

Cllr Gurch Singh

James Sidwell

Andrew Hill

Cllr Neil Knowles

Councillor for St Marys Ward

Local resident and customer of Smokeys

Local resident

Local Councillor

DOCUMENTS TABLED AT THE INQUIRY AND SINCE

(Numbers as per the list compiled by the acquiring authority, except where shown)

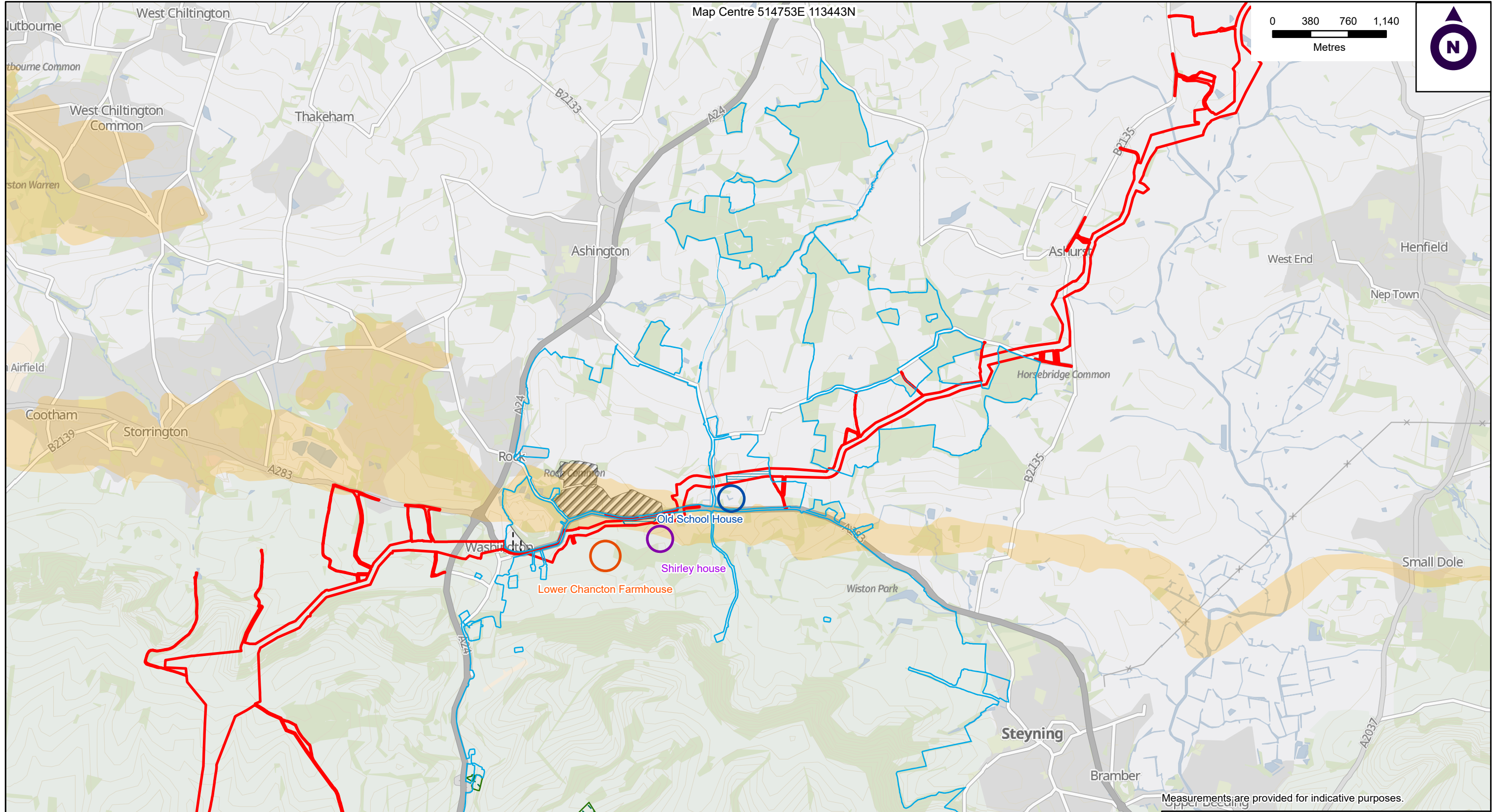
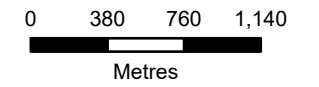
- B16 Executed S106 agreement, dated 20 October 2022
- B17 Planning permission Ref 20/01251, dated 21 October 2022
- H14a Equality Impact Assessment for CPO, 4 February 2021
- H14b Equality Impact Assessment for BLP, 30 November 2021
- H15 Statement of Community Involvement, May 2020 (extract)
- H16 'Timeline of emails and meetings' (L & D Page)
- H17 Email from Areli, 14 Jan 2020 (Page doc 1)
- H18 Email to councillors, 7 March 2021 (Page doc 3)
- H19 Email to Cllr Haseler, 28 Feb 2021 (Page doc 4)
- H20 Email from B Richardson, 2 Aug 2021 (Page doc 5)
- H21 Emails to/from B Richardson, 6/7 April and 22 March 2021 (Page doc 6)
- H22 Email from B Richardson, 27 May 2021 (Page doc 7)
- H23 Emails to/from B Richardson, 25 Feb and 2/3 March 2021 (Page doc 8)
- H24a Emails to/from C Pearse, 19 and 24 March 2021 (Page doc 9)
- H25 Plans attached to email dated 28 June 2022 (Page doc 10a)
- H26 Heads of Terms (Page doc 10b)
- H27 Emails from D Conboy, 1 July 2022 (Page doc 11)
- H28 Emails to/from Cllrs Stimson and Carroll, 2 July 2020 (Page doc 12)
- H29 Emails to/from Cllr Johnson, 6 Aug – 2 Oct 2020 (Page doc 13)
- H30 Emails from G Blagden and J Wright, 9/10 March 2020 (Page doc 14)
- H31 Letter from Areli, 28 Feb 2019
- H32 Emails from G Blagden and B Richardson, 13 Jan 2021 (Page doc 17)
- H33 Emails to/from J Lees and W Allen, 13, 16, 17 Nov 2020 (Page doc 20)
- H34 Emails to/from Monitoring Officer, 16 – 22 March 2021 (Page doc 21)
- H35 Local press item dated 1 April 2021 (Page doc 22)
- H36 M Bodley – additional Appendices dated 26 Oct 2022
- H37 Opening Statement on behalf of the Page family
- H38 Stopping-Up Order correspondence with DfT
- H39 RBWM's Negotiation Record Sheet – Nicholson House
- H40 Opening Statement on behalf of the Authority
- H41 'Compensation Eligibility of Objectors' - RBWM
- H42 RBWM's Negotiation Record Sheet – Smokeys' Nightclub, with attached:
 - H42a*: Emails D Conboy/G Blagden, 19 July – 30 Aug, 2022
 - H42b*: Plan – Zone 5 GF level
 - H42c*: Emails to/from B Richardson and E Harris, 16 - 27 Nov, 2020
 - H42d*: Emails to/from B Richardson, 17 Dec 2020 – 13 Jan 2021
 - H42e*: 3 plans of GF unit with heights and measurements
 - H42f*: Emails D Conboy/G Blagden, 19 July – 10 Aug, 2022
- H43* Inquiry notice, with photos and Certificate of Billposting
- H44 Letter to Cllr Haseler, 28 Feb 2021 (Page doc 2, duplicate of H19)
- H45 Smokeys' existing lease plan; and 5 x alternative layout options for Zone GF
- H46 Smokeys' event advertisements
- H47 Unit 24a, Smokeys' existing lease areas schedule and plans
- H48 RBWM Licensing Policy
- H49a Transcript of Planning Committee meeting, 3 March 2021 (L & D Page)
- H50 Closing Submissions on behalf of the Page family
- H51 Closing Submissions on behalf of the Authority
- H52 Letter from Blandy & Blandy, 1 Dec 2022 – re filing of JR claim
- H53 Letter from Dentons LLP, 6 Dec 2022 - response

* Inspector's numbering

Appendix R

Wiston Estate Overlay Plan

Map Centre 514753E 113443N



Legend

- Wiston Estate Boundary
- Potential Vineyard Areas Affected by Order Limits- 14.49 ac
- Existing Vineyards - 31.59 ac
- Construction compound - Works No.9 and Works.no.10 - 9.58 ac
- Minerals Safeguarding Area - 8.2 ha (20.26 ha affected by DCO Limits)
- Active or Recent Landfills

Carter Jonas

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Client: **Rampion Extension Development Ltd**

Project: **Wiston Estate**

Title: **Site Plan**

Scale: 1:37,500 @A3 Date: 07/05/2024

Drawn by: IC Dwg no: **J0039831-24-01**

Measurements are provided for indicative purposes.

