

# Rampion 2 Wind Farm

## Category 8: Examination Documents

### Applicant's Closing Statement

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**Revision A**

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## Document revisions

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## EXECUTIVE SUMMARY

1. This document is intended to assist the Examining Authority and the Secretary of State ("SoS") in their reporting and decision-making on the application for a Development Consent Order ("DCO") for the Rampion 2 Offshore Wind Farm ("Rampion 2").
2. This document has been prepared by the Applicant setting out its final position on the principal issues noted in Annex C of the Examining Authority's Rule 6 letter dated 14 December 2023 [PD-006] and on further substantive issues that were raised during the Examination. It is based upon the submissions of Interested and Affected Parties made up to and including Deadline 5<sup>1</sup>, and any further agreement reached between them and the Applicant prior to Deadline 6, and on the Applicant's submissions up to and including Deadline 6.
3. The Applicant's full case is set out in the application documents, and has been articulated at the Issue Specific Hearings and in other evidence submitted during the course of the Examination. Consequently, these submissions do not seek to introduce new material nor raise any new issues. Neither do they duplicate the extensive submissions and evidence submitted during the Examination which should be referred to in full.
4. In relation to the issues, this document summarises the Applicant's final position, signposts where related submissions can be found in the Examination Library, addresses outstanding issues and provides a conclusion on the Applicant's suggested approach to decision making under s104 Planning Act 2008. In particular, this document should be read alongside the Final Statements of Common Ground (which include the Principal Areas of Disagreement Statements), the Examination Progress Tracker and Final National Policy Statement Tracker (all submitted by the Applicant at Deadline 6).
5. As evidenced below, all key issues raised by the ExA, APs and IPs have been addressed by the Applicant and, where possible, resolved. Where it has not been possible to formally resolve matters before the close of the Examination, the Applicant will continue to seek agreement with the relevant parties and where appropriate will update the SoS as soon as possible prior to the determination of the application.
6. The planning need for the Proposed Development is summarised in Section 3 and further described in Planning Statement [APP-036] (updated at Deadline 6).
7. The need for the Proposed Development arises from the need for low carbon energy generation as set out in the NPS EN-1 (2011), and for which a critical national priority is identified in NPS EN-1 (DESNZ, 2023). The Proposed Development's consent and delivery is key to achieving net zero emissions in accordance with national planning and energy policy.
8. In formulating the application, and throughout the examination, the Applicant has engaged constructively with Interested and Affected Parties and other statutory bodies to address issues raised by them where possible. The impacts that remain are the residual impacts following the application of the mitigation hierarchy and should not therefore outweigh the substantial benefits of the Proposed Development.

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<sup>1</sup> including the submissions of Natural England in response to the ExA's Rule 17 letter dated 12 July 2024 [PD-016]

9. In particular, the Applicant has been cogniscent throughout of the need to design the Proposed Development to seek to avoid, minimise and mitigate its impacts on the South Downs National Park where possible. The mitigation hierarchy has demonstrably been applied both in respect of the cable route which crosses the National Park and its associated temporary construction activities, and the design of the wind farm array and offshore substations which are experienced as views from the National Park. The Applicant's approach is explained in further detail in Section 5. This design approach and the agreement of a compensation package during the examination (see Section 9) illustrate how the Applicant's proposals have complied with the duty to seek to further the purposes of the National Park in section 11A of the National Parks and Access to Countryside Act 1949 and the Applicant welcomes the SDNPA's agreement (see SoCG with the SDNPA (document reference 8.4) and Joint Position Statement with the SDNPA submitted at Deadline 6 (document reference 8.109) that the package of measures proposed will secure that outcome.
10. Through the development parameters and commitments set out in the control documents secured by the draft DCO **[REP5-005]** (updated at Deadline 6) the Applicant has demonstrated that the Proposed Development will not have any adverse effect on the integrity of any European Sites nor hinder the conservation objectives of any Marine Conservation Zones. As Natural England and the MMO have not been able to reach agreement on this conclusion in respect of all sites the Applicant has presented a HRA derogations case and presents MEEB and drafting to secure such measures in the DCO **(alternative Schedule 17 (on a without prejudice basis) – document reference 5.10, and Measures of Equivalent Environmental Benefit (on a without prejudice basis) – document reference 8.80)** on a without prejudice basis should the SoS consider that these are required.
11. With regard to proposed compulsory acquisition and temporary possession powers the position at Deadline 6 is summarised as follows:
  - Meaningful progress has been made by the Applicant in reaching voluntary agreement for the land and rights required for the Proposed Development, further details of which are contained in **Section 6** below. This includes the voluntary agreement which has been entered into in respect of the land needed to provide the onshore substation at Oakendene. However, it remains necessary for the Applicant to seek the authorisation of compulsory acquisition powers to ensure that the Proposed Development can proceed within a reasonable timescale. There are outstanding objections to compulsory acquisition, including from statutory undertakers, in respect of which the Applicant submits that the tests in Section 127 of the Planning Act 2008 are met.
  - All of the Order Land, including the proposed new rights and restrictive covenants over the Order Land, is required for the purposes of the Proposed Development, to facilitate the Proposed Development, or is incidental to, the Proposed Development. The extent of land within the Order Limits is proportionate and is no more than is reasonably necessary.
  - Most particularly the Applicant has limited its acquisition powers in relation to the cable corridor to the acquisition of new rights and restrictive covenants. Temporary possession powers will be used during construction, which will enable permanent acquisition powers to be acquired over a lesser area once the construction of the cable corridor has completed. Land which is no longer needed following construction will be reinstated and possession

will be returned to the landowners. This approach will minimise the permanent impacts on landowners.

- There is a compelling case in the public interest for the land and rights/restrictive covenants over the land to be acquired given the significant positive benefits that the development will generate.

12. In addition:

- reasonable alternatives to compulsory acquisition have been explored as explained in Section 6 below;
- it has been demonstrated that the interference with rights is for a legitimate purpose, is necessary and is proportionate;
- the Applicant has demonstrated it has a clear idea how it intends to use the land (or rights/restrictions over land);
- an explanation has been provided as to how it is expected that the construction of the Proposed Development and the acquisition of the land or rights over the land will be funded, as well as compensation arising from the exercise of powers of compulsory acquisition, which demonstrates that there is a reasonable prospect of the requisite funds being available;
- subject to the making of the Order, there are no known impediments to the delivery of the Proposed Development;
- Article 1 of the First Protocol to the ECHR and Articles 6 and 8 of the ECHR have been considered, and the outputs and benefits which will be realised by the Proposed Development will outweigh the private loss that would be suffered by those whose land and/or interests are to be subject to compulsory acquisition; and
- due regard has been had to the Equalities Act 2010 requirements in the evolution of the Proposed Development and liaison with those whose land will be affected.

13. The Applicant submits that the tests in sections 122 and 123 of the Planning Act 2008 are met and that there is a compelling case in the public interest for the authorisation of the compulsory acquisition powers and powers of temporary possession sought in the Order.

14. In overall conclusion, the Applicant considers that having full regard to the relevant extant policies and matters set out below, the positive benefits of the Rampion 2 Project outweigh any adverse impacts and consent should be granted and the DCO made in the form sought by the Applicant.

## 1. INTRODUCTION

- 1.1 This document is intended to assist the Examining Authority and the Secretary of State ("**SoS**") in their reporting and decision-making on the application for a Development Consent Order ("**DCO**") for the Rampion 2 Offshore Wind Farm ("**Rampion 2**"). The proposed development is described in full in Environmental Statement Chapter 4: Project Description ("**the Proposed Development**") updated at Deadline 6 and which reflects the change request accepted by the Examining Authority ("**ExA**") on 24 July 2024 [**PD-018**].
- 1.2 This document has been prepared by the Applicant setting out its final position on the principal issues noted in Annex C of the Examining Authority's Rule 6 letter dated 14 December 2023 [PD-006] and on further substantive issues that were raised during the Examination. It is based upon the submissions of Interested and Affected Parties made up to and including Deadline 5<sup>2</sup>, and any further agreement reached between them and the Applicant prior to Deadline 6, and on the Applicant's submissions up to and including Deadline 6.
- 1.3 The Applicant's full case is set out in the application documents, and has been articulated at the Issue Specific Hearings and in other evidence submitted during the course of the Examination. Consequently, these submissions do not seek to introduce new material nor raise any new issues. Neither do they duplicate the extensive submissions and evidence submitted during the Examination which should be referred to in full.
- 1.4 In relation to each issue, this document summarises the Applicant's final position, signposts where related submissions can be found in the Examination Library, addresses outstanding issues and provides a conclusion on the Applicant's suggested approach to decision making under s104 Planning Act 2008. In particular, this document should be read alongside the Statements of Common Ground (which include the Final Principal Areas of Disagreement Statements), the Examination Progress Tracker and Final National Policy Statement Tracker (all submitted by the Applicant at Deadline 6).
- 1.5 As evidenced below, all key issues raised by the ExA, APs and IPs have been addressed by the Applicant and, where possible, resolved. Where it has not been possible to formally resolve matters before the close of the Examination, the Applicant will continue to seek agreement with the relevant parties and where appropriate will update the SoS as soon as possible prior to the determination of the application.
- 1.6 The Applicant considers that having full regard to the relevant extant policies and matters set out below, the positive benefits of the Rampion 2 Project outweigh any adverse impacts and consent should be granted in the form sought by the Applicant.

## 2. STATUTORY FRAMEWORK

### 2.1 Planning Act 2008

- 2.1.1 Section 104 of the Planning Act 2008 applies in cases where a national policy statement (NPS) has effect. For the purposes of the application NPS EN-1 and NPS EN-3 apply to offshore wind schemes, and NPS EN-5 is relevant to grid connections (DECC, 2011a; 2011b; 2011c) and so have effect. On 17 January

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<sup>2</sup> including the submissions of Natural England in response to the ExA's Rule 17 letter dated 12 July 2024 [PD-016]

2024 a revised suite of national policy statements for energy was designated by Parliament. Paragraph 1.6.2 of the revised NPS EN-1 (DESNZ, 2023) states:

*The Secretary of State has decided 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*

- 2.1.2 Accordingly, as the application was accepted for examination on 7 September 2023 [**PD-001**], the Secretary of State's decision on the application for the Proposed Development must be made in accordance with the 2011 NPSs, unless one or more of the exceptions set out in Section 104 (subsections 4 to 8) of the Planning Act 2008 apply.
- 2.1.3 In addition, the Secretary of State is required to have regard to matters which are important and relevant to the decision. The Applicant's position is that the revised suite of energy NPSs are both important and relevant to the determination of the application and in particular in respect of their updated policies on the need for the proposed development, that the proposed development is one for which there is now a critical national priority and the manner in which the SoS expects that priority to be reflected in the decision making process.
- 2.1.4 The Planning Statement [**APP-036**] included an assessment of the Proposed Development against the revised NPSs as published in draft at the time the application was submitted. Pursuant to a request from the Examining Authority, the Applicant has provided a summary of the differences between the draft and designated NPSs, and the implications of the changes in the latter for consideration of the Application [**REP1-031**]. The Applicant is also submitting a Final National Policy Statement Tracker at Deadline 6 as requested by the ExA in its examination timetable. This demonstrates that the proposed development accords with both the NPSs which "have effect" and also the revised versions.
- 2.1.5 The application for development consent also includes provision for the compulsory acquisition of land and to modify the application of other legislative provisions. The applicant's approach to compulsory acquisition is set out below in **Section 6**.
- 2.1.6 The application includes the carrying out of development in the South Downs National Park. As such, the Applicant in formulating its proposals and in further discussions with the South Downs National Park Authority throughout the pre-application phase and during the examination has sought to further the statutory purposes of the National Park in compliance with the duty set out in section 11A of the National Park and Access to the Countryside Act 1949 as amended by the Levelling Up and Regeneration Act 2023. Further details on Applicant's response to the application of the duty are set out below in **Sections 5.1.18**.
- 2.1.7 As required by the Infrastructure Planning (Environmental Impact Assessment) Regulations, the Proposed Development has been subject to EIA as reported in the Environmental Statement. This document reports the application of the mitigation hierarchy, and the identification of significant adverse residual effects; these are covered as relevant as part of the responses to the Principal Issues.
- 2.1.8 The Application has also assessed the impact of the Proposed Development on protected species and habitats pursuant to the Conservation of Habitats and Species Regulations 2017 and the Conservation of Offshore Marine Habitats and Species Regulations 2017. Whilst the Applicant's Report to Inform Appropriate Assessment [**REP5-025**] concluded that there will be no adverse effects on the

integrity of any European sites, Natural England has not been able to advise that such effects can be ruled out in respect of all European sites. Accordingly, in respect of sites where Natural England has not been able to advise that such effects can be ruled out, the Applicant has submitted a derogation case on a without prejudice basis. Further details are set out in **Sections 5.6.85 to 5.6.101** below. Similarly, whilst the Applicant's draft Marine Conservation Zone Assessment **[APP-040]** concluded that the Proposed Development will not hinder the conservation objectives of marine conservation zones, the Applicant has submitted Measures of Equivalent Environment Benefit (MEEB) Review for Kingmere Marine Conservation Zone (MCZ) **[REP4-078]** on a without prejudice basis.

- 2.1.9 The Applicant recognises that additional consents and licences will be required in order to implement the Proposed Development. These are identified in the Applicant's Other Consents and Licenses submission **[APP-033]**. The Applicant is not aware of any reason why any of those consents and licences should be withheld.

### 3. **PLANNING NEED AND BENEFITS OF THE PROPOSED DEVELOPMENT**

- 3.1 The urgent need for the Proposed Development is clearly established through the NPSs. The NPSs relevant to the Proposed Development were produced by the former Department of Energy and Climate Change (DECC), now the Department for Energy Security and Net Zero (DESNZ) and designated in July 2011. They include assessment principles and policy in respect of the consideration of impacts associated with energy infrastructure proposals, including offshore wind schemes.

- 3.2 The 2011 version of overarching policy for energy, EN-1 (DECC, 2011a) stated:

*'3.1.1 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.'*

*'3.1.3 The IPC should therefore assess all applications for development consent for the types of infrastructure covered by the energy NPSs on the basis that the Government has demonstrated that there is a need for those types of infrastructure and that the scale and urgency of that need is as described for each of them in this Part.'*

*'3.1.4 The IPC should give substantial weight to the contribution which projects would make towards satisfying this need when considering applications for development consent under the Planning Act 2008.'*

- 3.3 Revised NPS EN-1 (DESNZ, 2023) as designated in 2024 includes similar wording:

*'3.2.6 The Secretary of State 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.'*

*'3.2.7 In addition, the Secretary of State has determined that substantial weight should be given to this need when considering applications for development consent under the Planning Act 2008.<sup>3</sup>'*

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<sup>3</sup> EN1 2023,



- 3.4 Further, the Proposed Development type is recognised as being a critical national priority (CNP) in NPS EN-1 (DESNZ, 2023) and NPS EN-3 (DESNZ, 2023), for which there is an urgent need to deliver to achieve energy security and Net Zero.
- 3.5 As set out in Section 5.4 of the Planning Statement **[APP-036]** (updated at Deadline 6) the Proposed Development will bring many benefits. These include contributing towards meeting the urgent need for new energy infrastructure in the UK, providing enhanced energy security, supporting the economic priorities of the UK Government and, critically, making an important contribution to decarbonisation of the UK economy and achievement of Net Zero, in addition to environmental and social benefits.
- 3.6 Whilst residual adverse effects of the Proposed Development are also noted, and are described below, the NPSs confirm that, subject to any legal requirements, the urgent need for energy infrastructure (and specifically CNP infrastructure in the 2024 NPSs) to achieving the country's energy objectives, together with the national security, economic, commercial, and climate change mitigation benefits, will in general outweigh any other residual impacts not capable of being addressed by application of the mitigation hierarchy. The Applicant has demonstrated throughout the examination of the application that the mitigation hierarchy has been applied at every stage of the project's evolution. This has continued where possible through engagement with Interested Parties throughout the examination, and consequently any residual impacts are those which the NPSs mandate should be outweighed by the urgency of the need.

#### 4. **POLICY FRAMEWORK**

- 4.1 The planning policy framework for the Proposed Development is set out in the Planning Statement **[APP-036]** (updated at Deadline 6) and the Applicant's Final National Policy Statement Tracker **[REP2-015]** submitted at Deadline 6 (document reference 8.38).
- 4.2 Section 1.6 of NPS EN-1 (DESNZ, 2023), which came into force in 2024, 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 **[PD-006]** confirms in Annex B that this provision applies to the Proposed Development.
- 4.3 The Applicant's Final National Policy Statement Tracker **[REP2-015]** submitted at Deadline 6 (document reference 8.38) demonstrates that the Proposed Development accords with both the NPSs which "have effect" in accordance with the Planning Act 2008 and also the revised versions of the NPSs, which came into force in 2024.
- 4.4 Whilst the NPSs are the primary policy documents in respect of the SoS's decision on the DCO Application, the Planning Act sets out that the SoS must also have regard to other matters which they think are both important and relevant; these matters include national and local policy.
- 4.5 The Planning Statement **[APP-036]** (updated at Deadline 6) Sections 4.6 and 4.7 outline compliance of the Proposed Development with other national policy (including the National Planning Policy Framework) and local policies, including assessment against the Development Plan policies set out in the local plans and neighbourhood plans for Arun District Council, Horsham District Council, Mid Sussex District Council, South Downs National Park Authority, and West Sussex County Council that are relevant to the Proposed Development. Although local

planning policy may be an important and relevant consideration to decision making on DCO applications any conflict between the NPSs and local policy is resolved by the principle that policy of the NPSs 'prevails' given the national significance of the infrastructure.

- 4.6 Under the Planning Act 2008 the SoS must have regard to UK Marine Policy Statement (MPS) (HM Government, 2011) and any applicable Marine Plan. Section 3.3 of the Planning Statement **[APP-036]** (updated at Deadline 6) sets out the overarching Marine Policy Statement objectives whilst 3.4 sets out the overarching South Inshore and South Offshore Marine Plan which were designated in July 2018 and of relevance to the Proposed Development. Section 4.6 and Section 4.7 (in reference to socio-economic matters only) set out detailed policy by topic considered in the ES and an assessment of the accordance with MPS and Marine Plans.
- 4.7 The Applicant has additionally submitted a Marine Plan and Policies Statement at Deadline 2 **[REP2-027]** and an updated version at Deadline 4 **[REP4-068]** which demonstrates the Applicant's adherence to the relevant marine plans and policies including the scope of the plan or policy, a summary of how the Proposed Development is compliant and signposting to the relevant document where applicable.
- 4.8 Overall, the Proposed Development accords with both the 2011 suite of NPSs that "have effect", the 2024 suite of NPSs, and the marine policies, as demonstrated in the Final National Policy Statement Tracker **[REP2-015]** submitted at Deadline 6 (document reference 8.38), Marine Plan and Policies Statement **[REP4-068]**.
- 4.9 Therefore, it is concluded that that the Proposed Development complies with the policy requirements.

## 5. **EXAMINING AUTHORITY'S PRINCIPAL ISSUES**

- 5.1 This section sets out the Applicant's final position in respect of the Principal Issues for the Examination as set out in its letter issued under rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010 **[PD-006]**

### **Alternatives - Whether alternatives to the Proposed Development were adequately considered including the avoidance of the Climping Beach Site of Scientific Special Interest (SSSI), the route choice including its incursion into the South Downs National Park (SDNP) and the choice of the onshore substation location**

#### *The route choice including its incursion into the South Downs National Park*

- 5.2 The route for the onshore cable corridor to connect the energy generated by the offshore generating station was driven by the location of the array area, consideration of landfall location and the grid connection location. The detail of these appraisals including locations and routes considered are set out in the Environmental Statement - Volume 2 Chapter 3 Alternatives **[APP-044]** (updated at Deadline 6):
- Section 3.2 Offshore array site selection
  - Section 3.3 Grid Connection Identification
  - Section 3.4 Landfall and onshore cable route

- 5.3 The status and protection of the SDNP afforded in both policy and legislation were recognised during the appraisal and the Applicant considered grid connection options that were located south of the NP which would avoid incursion into the NP from the onshore cable route. These options included Fawley, which is located in the order of 80km west from the final connection location at Bolney. At ISH1, the ExA requested further information on the potential grid connections at Fawley as well as Dungeness. Further to Chapter 3, the Applicant refers to the details in the Applicant's Post Hearing Submission – Issue Specific Hearing 1 Appendix 1 - Further information for Action Point 3 – Fawley and Dungeness **[REP1-019]**.
- 5.3.1 The contributing factors for discounting the Fawley site included technical constraints with regard to the significance of the vessel traffic in the associated offshore approaches to the site and the expected high presence of UXOs. Significant environmental features of international importance (including the Solent Maritime Special Area of Conservation (SAC) and Solent and Southampton Water Special Protection Area (SPA) are also unavoidable with this option in relation to the offshore approaches to the site and within the onshore search area for a new substation. The New Forest National Park boundary is also in close proximity to the Fawley substation and due to limited adjacent land it is likely the landfill works and permanent onshore substation would be required within the NP.
- 5.3.2 The contributing factors for discounting the Dungeness site included technical constraints with regard to the complexities that would be potentially associated with adjacent Dungeness power station site. Significant environmental constraints of international importance (including the Dungeness, Romney and Rye Bay SPA) are also unavoidable with this option with offshore approaches to the site and within the onshore search area for a new substation. As set out in the Applicant's response to the ExA's First Written Questions AL1.2 **[REP3-051]**, the Inshore Traffic Zone (ITZ) presented a further constraint for Dungeness that the Applicant avoided in the Proposed Development by reducing the proposed DCO Order Limits prior to Application to avoid any overlap with the ITZ.
- 5.3.3 By discounting Fawley and Dungeness, the application of the mitigation hierarchy in the appraisal process has been demonstrated through avoidance of the potential impacts of sites of international importance noted above. This is reflected in the response from Natural England in response to the ExA's First Written Question reference AL1.1 in **[REP3-086]** where they reflected the potential effects on the sites mentioned and noted that in the first instance any route should look to avoid any designated sites or designated landscapes.
- 5.3.4 For the grid connection point, an appraisal was undertaken by the Applicant in parallel with the Connections Infrastructure Option Notice (CION) process<sup>4</sup> led by National Grid Electricity System Operator (NGESO). The Cost Benefit Analysis carried out by NGESO as part of the CION process showed that Bolney was the most economical and efficient option. The final preferred option was agreed between the Applicant and NGESO to be Bolney on 5 February 2020. In their response to the ExA's First Written Questions AL1.3 **[REP3-077]** National Grid confirmed that it was aligned with the position the Applicant had explained in the DCO Application and subsequent submissions during Examination including REP1-019 relating to the CION process.
- 5.3.5 Consequently, due to the location of the array south of the NP and the point of grid connection north of the SDNP, it was necessary to cross the NP in order to realise the overall benefits of the project. The wide extent of the NP from east to

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The key findings of the CION process are presented in Section 3.3 of Chapter 3: Alternatives of the Environmental Statement **[APP-044]** (updated at Deadline 6).

west precluded any feasible solution of avoiding the NP. Whilst acknowledging that each application must be considered on the circumstances that prevail at the time, the Applicant also notes that a similar conclusion was drawn from the routing of the cable for the original Rampion project also needing to cross the NP to its connection point at Bolney.

- 5.3.6 The Applicant submits that the legislative and policy tests have been met as set out below, and that the position presented by the SDNPA in the SoCG **[REPS-093]** that these requirements have not been addressed is not correct.
- 5.3.7 Schedule 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 requires that Environmental Statements include a description of the reasonable alternatives (for example in terms of development design, technology, location, size and scale), which are relevant to the proposed project and its specific characteristics and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects. The Applicant has complied with this legislative requirement in demonstrating the consideration of alternative options to crossing the SDNP including environmental effects in accordance with the mitigation hierarchy as described above.
- 5.3.8 Further NPS EN-1 (2011) states that development consent may be granted within NPs in exceptional circumstances and that the development should be demonstrated to be in the public interest (paragraph 5.9.10 of EN1 (DECC, 2011). NPS EN-1 (DESNZ, 2023) paragraph 5.10.31 also includes these considerations.
- 5.3.9 The Applicant has considered the detail of the policy tests relating to development taking place within the SDNP and considers that the Proposed Development is demonstrably in the public interest, that there are exceptional circumstances for granting the Proposed Development, and that the impacts of the Proposed Development on the SDNP are outweighed by the benefits of the scheme as summarised in **Section 3**. Further Section 4.4 of the Planning Statement **[APP-036]** (updated at Deadline 6) sets out the Applicant's consideration of the further detailed elements in these sections of policy; the need for the development is set out in paragraphs 4.4.7 to 4.4.21; the cost and scope of development alternatives set out in paragraph 4.4.22 to 4.4.67; the detrimental effect on the environment, landscape and recreational opportunities and extent to which that could be moderated set out in paragraphs 4.4.68 to 4.4.90.
- 5.3.10 In particular, the Applicant draws support from the following paragraphs of EN-1 (2024) on how the question of whether exceptional circumstances have been demonstrated for the purposes of paragraphs 5.9.10 EN-1 (2011) and 5.10.31 EN-1 (2024) in relation to infrastructure for which there is a critical national priority (relevant extracts only):

*4.2.16 As a result, the Secretary of State will take as the starting point for decision-making that such infrastructure is to be treated as if it has met any tests which are set out within the NPSs, or any other planning policy, which requires a clear outweighing of harm, exceptionality or very special circumstances.*

*4.2.17 This means that the Secretary of State will take as a starting point that CNP Infrastructure will meet the following, non-exhaustive, list of tests:*

*[...]*

- *where development in nationally designated landscapes requires exceptional circumstances to be demonstrated; and*

[...]

- 5.3.11 The Applicant assessed the impacts to features of the SDNP within the Environmental Statement. At ISH1, the ExA requested a single document summarising the effects on the special qualities of the NP and the mitigation and enhancement proposals which was provided in Applicant's Post Hearing Submission – Issue Specific Hearing 1 Appendix 5 – Further information for Action Point 27 – South Downs National Park **[REP1-024]**, subsequently updated at Deadline 4 in **[REP4-063]**.
- 5.3.12 This document summarised the effects on each of the seven special qualities (SQs) of the SDNP, the mitigation and enhancements and how they are secured. The document also considered these effects further in terms of any impact to the statutory purpose of the NP that includes both (a) conserving and enhancing the natural beauty, wildlife and cultural heritage; and (b) promoting opportunities for the understanding and enjoyment of the special qualities by the public (Section 5(1) of the National Parks and Access to the Countryside Act (1949)). Further it addresses the Levelling-up and Regeneration Act 2023 (which was enacted in December 2023 following the Rampion 2 Application (accepted in September 2023 **[PD-001]**) which introduced the duty for all 'relevant authorities' (including the Secretary of State) performing any functions which relate to land in a national park, that in doing so they "must seek to further the purposes" of national parks in 5(1) of the 1949 Act.
- 5.3.13 The Applicant concludes that there is harm to SQ1 "Diverse, inspirational landscapes and breathtaking views" (during construction and operation) and SQ3 "Tranquil and unspoilt places" (during construction). In seeking to minimise the impacts from the offshore array, the Applicant took major design decisions including the reduction in the array area following statutory consultation and implementation of design principles (discussed further in **Section 5.8** - SLVIA) prior to DCO Application. Further representations were made from the SDNPA through Examination to seek to reduce the offshore array and turbine size further to reduce seascape, landscape and visual impacts as documented in SDNPA08 in the Statement of Common Ground with SDNPA **[REPS-093]** (updated at Deadline 6). The Applicant notes NPS EN-1 (DECC, 2011) paragraph 5.9.21 and NPS EN-1 (DESNZ, 2023) paragraph 5.10.26 both recognise such measures have the potential to reduce visual impact but note this may also reduce function such as the electricity output. Subsequently, NPS EN-1 (DESNZ, 2023) has identified offshore wind as a critical national priority (CNP) to deliver nationally significant low carbon infrastructure and the Applicant considers that any further reduction would reduce the benefits of the project, including providing low carbon electricity, which are considered to outweigh the harms identified.
- 5.3.14 The Applicant recognises the temporary impacts arising from the section of the onshore cable route in the SDNP and is committed to delivering the project to the highest environmental standards as referred to in NPS EN-1 (DESNZ, 2023) in order to seek to avoid, reduce and minimise the impacts, both within and beyond the SDNP. Throughout **[REP4-063]** the Applicant has provided details of the mitigation measures applicable to each special quality and how they are secured through the management plans and related requirements of the draft DCO **[REPS-005]** (updated at Deadline 6).
- 5.3.15 While harm has been identified, it is not the duty to avoid all harm and such harm does not translate to compromising the statutory purpose of the SDNP. The natural

beauty, wildlife and cultural heritage that make up the affected areas and the wider SDNP will remain and opportunities will still be present for understanding and enjoyment by the public of the special qualities of the SDNP.

5.3.16 With regard to how it has complied with the duty to seek to further the purposes of the National Park as required by s11A of the 1949 Act, the Applicant set out its position on the approach to the duty in its response to Action Point 35 arising from ISH2 [REP4-074]. Its response and also the measures set out in the Applicant's Post Hearing Submission – Issue Specific Hearing 2 Further information on South Downs National Park [REP4-063] explain the how the Applicant has sought to further the purposes of the National Park. In addition to the consideration of the special qualities of the National Park throughout the design process and the application of the mitigation hierarchy to reduce effects, the Applicant has committed to:

- the provision of a compensation secured via requirement 43 of the draft DCO to include funds for landscape and nature recovery to contribute to the landscape, scenic beauty and wildlife within the SDNP and which also provides opportunity for enhanced understanding and opportunity for enjoyment by the public including projects or location specific interpretation, projects relating to experiencing the tranquillity of the SDNP including enjoyment and understanding relating to dark skies as well as outreach to celebrate the landscape and wildlife
- the fund may also be applied to projects to improve accessibility in relation to rights of way, the Applicant is seeking to provide for projects that would clearly enhance the ability for all to enjoy the landscapes, scenic beauty, wildlife and cultural heritage afforded via these rights of way whether through improved access, signage, interpretation or other means.
- delivering Biodiversity Net Gain including the quantification of BNG within the context of the SDNPA area alone. The Applicant is also seeking to provide localised biodiversity enhancements during reinstatement in accordance with paragraph 4.1.2 of the Outline Landscape and Ecology Management Plan [REP5-072] (updated at Deadline 6). This provides betterment of biodiversity over and above the residual effects of the Proposed Development that will be compensated for.

5.3.17 The Applicant welcomes the SDNPA's agreement (see SoCG with the SDNPA (**document reference 8.4**) and Joint Position Statement with the SDNPA submitted at Deadline 6 (**document reference 8.109**)) that the package of measures proposed will secure the furtherance of the National Park's purposes.

*The avoidance of the Climping Beach Site of Scientific Special Interest (SSSI)*

5.3.18 A portion of the Climping Beach SSSI lies within the proposed Order Limits at the location of landfall. As explained by the Applicant at ISH2, the description of Works No 6 and 7 in Schedule 1 Part 1 of the draft DCO [REP5-005] (updated at Deadline 6) secure that cables and ducts will be "laid underground by horizontal directional drilling". Consequently, the draft DCO does not seek to authorise any above ground cable construction works within the SSSI. The assessment of effects on the SSSI therefore concluded no significant effects, further commentary on mitigation for residual risks such as frac out of drilling fluid is described further in **Section 5.4**.

5.3.19 The use of HDD at the landfall and under Climping Beach and its SSSI follows an established technique in the industry. The drilling process will start from the area

of the transition joint bay on the onshore side (comprising Works No 8 as described in the draft DCO **[REP5-005]** (updated at Deadline 6) and shown on sheet 1 of the Onshore Works Plans **[PEPD-005]** (updated at Deadline 6), and then pass underneath the shallower nearshore areas, the beach and the coastal hinterland (comprising Works No. 6 and 7). The Applicant notes that there are two locations identified for Work No 8 to allow for further detailed design taking into account a number of engineering factors including the geology and ground conditions, cable spacing and thermal rating and environmental factors including flood risk and coastal change. The Applicant submitted further information on these matters in the Applicant's Post Hearing Submission – Issue Specific Hearing 1 Appendix 6 – Further information for Action Point 7 – Horizontal Directional Drilling at Climping Beach **[REP1-025]**. The need for the cables to be installed under the SSSI or otherwise is dependent on the detailed design.

- 5.3.20 The Applicant expects the cable to be installed at a target depth of at least 5-10 metres and has committed to a minimum of 5m below surface / seabed level including at the SSSI in commitment C-278 to reduce the risk of drilling fluid breakout to the surface. The provision of the final depth is secured via the Outline Construction Method Statement **[REP5-088]** Section 3.4 and Requirement 23(2)(a) of the draft DCO and must be specified in the stage specific construction method statement for this part of the authorised development.
- 5.3.21 There would be no adverse effects on Climping Beach SSSI as a result of the Proposed Development and therefore it is considered to accord with the NPS policy requirements set out in Section 5.3 and specifically paragraphs 5.3.10-11 of NPS EN-1 (DECC, 2011a) and Section 5.4 and specifically paragraphs 5.4.7-8 of revised NPS EN-1 (DESNZ, 2023a).

*The choice of the onshore substation location.*

- 5.3.22 The Environmental Statement - Volume 2 Chapter 3 Alternatives **[APP-044]** (updated at Deadline 6) Section 3.6 provides information on how the onshore substation location at Oakendene was identified including consideration of alternatives. During ISH1, the ExA requested additional information in relation to the factors considered in the choice between the Wineham Lane North site and Oakendene that were included in the first statutory consultation as options for the onshore substation site. The Applicant set out the detailed reasons in the Applicant's Post Hearing Submission Issue Specific Hearing 1 Appendix 2 - Further information for Action Point 4 – Wineham Lane North **[REP1-021]**. This includes setting out the multidisciplinary factors in the decision making including engineering, environment and landowner considerations and related cost implications.
- 5.3.23 The Applicant provided further information in its submission to demonstrate that from an engineering perspective Wineham Lane North was unsuitable based on factors including space constraints affecting design, functioning of the equipment and access for operation and maintenance. The Oakendene site was identified as being able to achieve the engineering and technical requirements necessary to deliver the objectives of the planned project – to deliver likely potential capacity of 1,200MW of clean renewable energy to the electricity transmission network and the associated benefits.
- 5.3.24 Further to this, the Applicant identified potential developments which were entering the planning phase that covered a large proportion of the Wineham Lane North site which are reported in detail in Applicant's Post Hearing Submission – Issue Specific Hearing 1 Appendix 2 - Further information for Action Point 4 – Wineham Lane North **[REP1-021]**. Although at Oakendene, landowner

engagement had highlighted the potential expansion of the adjacent Oakendene industrial estate, there was no application in the planning system at the time of site selection and this remained throughout the examination. It was therefore considered there was the possibility of avoiding compulsory acquisition at the Oakendene site subject to further landowner engagement: this engagement concluded with settlement of a voluntary agreement between the landowner and the Applicant in January 2024.

- 5.3.25 A detailed description of the environmental factors factored in the decision making process is also provided in **[REP1-021]**, including ecological, landscape and heritage, water and drainage, noise and access and public rights of way.
- 5.3.26 The Applicant acknowledges that significant residual effects have been identified in relation to the onshore substation at Oakendene in the Environmental Statement - Volume 2 Chapter 18 Landscape and Visual Impact **[REP5-034]** and Environmental Statement - Volume 2 Chapter 25 Historic Environment **[REP4-024]**. This includes a residual significant effect on the setting of Oakendene Manor that was highlighted at the time of decision making and given considerable importance and weight during this process in line with the protection afforded under policy in Section 5.9 of NPS EN-1(2011) and replicated in paragraph 5.10.32 of the NPS EN-1 (2023). **Section 5.7** – HE effects on Oakendene Manor - provides further information on the measures in the Design and Access Statement **[REP5-023]** included to minimise this effect. The Planning Statement **[APP-036]** (updated at Deadline 6) concludes that the degree of change to the setting of heritage assets constitutes less than substantial harm in the context of NPS EN-1 and this conclusion has been reflected in agreement with West Sussex County Council as per **Section 5.7**.
- 5.3.27 Consequently, and with regard to the advice at paragraph 4.2.17 of EN-1 (DESNZ, 2023a) to the wider balancing exercise applying to critical national priority in respect of the heritage impacts identified upon Oakendene Manor (relevant extract only):

*This means that the Secretary of State will take as a starting point that CNP Infrastructure will meet the following, non-exhaustive, list of tests:*

[...]

- *where substantial harm to or loss of significance to heritage assets should be exceptional or wholly exceptional.*

the Applicant does not consider that the residual impacts on Oakendene Manor which amount to less than substantial harm following the application of mitigation are sufficient to outweigh the benefits of the project.

- 5.3.28 The decision was taken to discount Wineham Lane North on the basis of the three main factors outlined above when considered holistically and in order to deliver the planned project. The Proposed Development and the associated benefits are summarised in the Planning Statement **[APP-036]** (updated at Deadline 6) paragraphs 5.4.3 to 5.4.6 and include delivering renewable electricity and making a positive contribution to the UK Government’s target to reach net zero emissions by 2050. Overall, the Applicant considers that these benefits and need for renewable energy outweigh the adverse effects identified in the ES of the Proposed Development as a whole including those related to the onshore substation site at Oakendene. The Proposed Development will deliver on the urgent need for provision of energy infrastructure in accordance with NPS EN-1 (DECC, 2011a)



and for low carbon infrastructure which has been identified by the UK Government as a Critical National Priority in the revised NPS EN-1 (DESNZ, 2023a).

#### 5.4 **Aviation**

*The potential effect of the wind turbine generators (WTGs) to effect civilian and defence radar systems.*

- 5.4.1 As confirmed in the Applicant's Responses to Examining Authority's Second Written Questions (ExQ2)[**REP5-119**], the Applicant has reached an agreement with Brighton City Airport Limited (as owner of Shoreham Airport) that the Instrument Flight Procedures for the airport will not be updated until the post consent stage of the Proposed Development. This is because, depending on the final turbine design, it may not be necessary for the Instrument Flight Procedures to be updated.
- 5.4.2 The Applicant has included requirements 38 (Primary Surveillance Radar Mitigation) and 39 (Instrument flight procedures) in Part 3 of Schedule 1 of the draft Development Consent Order [**REP5-005**] (updated at Deadline 6) for the necessary mitigations to be put in place and retained for the lifetime of the Proposed Development. The wording of each requirement has been agreed with the beneficiary. The Applicant and NATS are finalising an agreement to implement the necessary radar mitigation. There are no material open issues between the parties on the form of the agreement or the wording of the Requirement to be included in the DCO. The Applicant and NATS are confident that the agreement will be finalized and signed promptly following the conclusion of the examination period. The Applicant has responded to the ExA's suggested minor amendments to the wording of requirement 39 in its Rule 17 letter dated 17 July 2024 [**PD-017**] in its Deadline 6 responses but does not consider that those changes detract from the substance of that agreement.
- 5.4.3 The Applicant sent an email to the Defence Infrastructure Organisation (DIO) Safeguarding on 22nd February 2024 and has sent a further email prior to Deadline 6. No response has been received. The emails explained that since scoping the westernmost extent of the Rampion 2 extension offshore array area has been refined so that it no longer infringes danger area D037.
- 5.4.4 No significant effects have been identified for impacts on civilian and defence radar systems. The Applicant has agreed suitable mitigations with stakeholders (Brighton City Airport, CAA and NATS) and is in discussions to facilitate delivery. It is therefore considered that the Proposed Development accords with the NPS policy requirements set out in Section 5.4 and specifically paragraphs 5.4.10-14 and 5.4.18-21 of NPS EN-1 (DECC, 2011a) and Section 5.5 paragraphs 5.5.37-40, 5.5.43-45 and 5.5.49 of revised NPS EN-1 (DESNZ, 2023a).

#### 5.5 **Commitments Register and Plans**

*The adequacy of the Commitments Register and the degree of uncertainty in the language used in the draft DCO related to proposed mitigation, particularly at sensitive locations*

- 5.5.1 The Applicant submitted revisions of the Commitments Register during the Examination as the commitments have evolved through requests from the ExA

and discussions with stakeholders. The revisions have included addition of further commitments since the DCO Application was submitted, amendments to wording to avoid uncertainty in language and to ensure clarity as to the mitigation measures to be implemented.

- 5.5.2 The Applicant has undertaken extensive review and update of the wording to ensure these measures are clear and ensure that the measures deliver the intended outcome. Where the wording provides a caveat such as 'where practicable', this has been included to ensure that where unexpected circumstances arise, mitigation can be amended to provide the same environmental outcome without risking non-compliance with the DCO.
- 5.5.3 The Commitments Register is included as a certified document in Schedule 16 of the draft Development Consent Order **[REP5-005]** (updated at Deadline 6) and sits alongside the Environmental Statement to record how all of the embedded mitigation measures for potential significant effects arising from the authorised development are secured. Those measures are then secured through the provisions of the draft DCO itself, the requirements set out in Part 3 of Schedule 1, and the deemed marine licences included at Schedules 11 and 12. Details have also been included within the Commitments Register to direct users to the relevant control documents, or other consenting regimes, which secure delivery of the measures.
- 5.5.4 In the Applicant's Responses to Examining Authority's Second Written Questions (ExQ2) **[REP5-119]**, the response to reference CR2.1 was provided to requests from IPs for further changes; the changes made and the Applicant's position where changes were not deemed appropriate were detailed in this response. The Applicant has further considered the Deadline 5 submissions by IPs with respect to commitments and noted any changes or justification on the Applicant's position in the Applicant's Responses to Deadline 5 submissions (Document Reference: 8.98). Amendments have been made in the final update to the Commitments Register **[REP5-086]** provided at Deadline 6. The Applicant has documented its position on commitments and their development throughout the Examination and submits that the embedded environmental measures identified in the Environmental Statement have been captured and secured in the Commitments Register, associated plans secured by the draft DCO and within the Requirements and conditions of the DMLs.
- 5.5.5 The Applicant has therefore sought to ensure there are no outstanding comments concerning the clarity of the commitments detailed in the Commitments Register.

*Efficacy of embedded mitigation measures*

- 5.5.6 As noted above the embedded mitigation measures have evolved with the design of the authorised project in line with the mitigation hierarchy and in negotiation with stakeholders. A number of commitments were identified at scoping to guide the refinement of the scheme and were revised, and supplemented at the statutory consultation, application and examination stages.
- 5.5.7 The commitments provided in order to avoid, reduce and minimise the impacts of the authorised project are detailed in the respective chapters of the Environmental Statement and collated in the Commitments Register **[REP5-086]** (updated at Deadline 6).
- 5.5.8 The related plans (or control documents) set out the relevant measures secured and set the framework for how further detail on their delivery will be provided during the discharge of Requirements or DML conditions. The draft DCO **[REP5-**

**005]** (updated at Deadline 6) secures submission and approval of the various control documents in requirements (as set out in Part 3 of Schedule 1 to the draft DCO and the DMLs) and provides for the requirements /conditions to be discharged by approval, on a staged basis, by a discharging authority appropriate to the subject matter. They secure that the documents must accord with the relevant outline document which has been submitted and certified through Schedule 16 of the draft DCO. The development must then be carried out in accordance with the stage specific control document, as approved. In this way, by way of example, all of those commitments identified in the outline code of construction practice, will need to be addressed in detail through the stage specific codes of construction practice as they apply to that stage, which will require approval by the relevant planning authority for the area where the stage is located.

- 5.5.9 Should the terms of a stage specific control document not be complied with, this will amount to a breach of the terms of the development consent order and be susceptible to enforcement.

## 5.6 Construction Effects

*The feasibility of horizontal directional drilling/trenchless crossings and open trenching methods at proposed locations along the proposed cable route, any proposed contingency measures and their potential impact.*

- 5.6.1 The Applicant has clearly defined in amendments to commitment C-5 and Requirement 6 (4) of the draft Development Consent Order [**REP5-005**] (updated at Deadline 6) that cable construction via trenchless crossing methods will be provided in accordance with the Crossing Schedule in Appendix A of the Outline Code of Construction Practice [**REP5-064**]. The Applicant does not seek authorisation for open cut trenching where trenchless crossings are identified and has therefore assessed the worst-case scenario across the onshore cable route in alignment with the crossing schedule. The Applicant notes that Natural England's have agreed in their Deadline 5 submission [**REP5-141**], that on this basis the worst case has been assessed.
- 5.6.2 The Applicant however strongly disagrees with Natural England's remaining position regarding feasibility of trenchless crossings as these are commonplace for cable installation including those projects crossing similar geological and environmental features developed by the Applicant. As set out in the Applicant's response to the Examining Authority's First Written Questions [**REP3-051**] and reiterated above, it is considered that the use of trenchless crossings in the locations identified in the Crossings Schedule are all feasible. The Applicant has firmly committed to undertake ground investigation and detailed design prior to construction as per industry best practice. Stage specific construction method statements based on the final design will be provided to the relevant planning authority for approval in consultation with Natural England as per DCO Requirement 23 [**REP5-005**] (updated at Deadline 6).
- 5.6.3 There are three locations where Order Limits are drawn wider than in other areas of the cable route. At these locations, trenchless crossing methods are proposed to facilitate the cable to traverse areas that are particularly environmentally sensitive. The Order Limits at these locations are drawn wider to provide the required flexibility to the contractor to construct the most appropriate route based on detailed design and ground investigation. The need for wider order limits at these locations has been clarified in Action Point 8 of the Applicant's Response to

Action Points Arising from Issue Specific Hearing 2 and Compulsory Acquisition Hearing 1 **[REP4-074]**. The areas are:

- Michelgrove Park – to cross an area of sensitive Ancient Woodland (AWL)
- Sullington Hill – to cross a sensitive chalk escarpment which is also a Local Wildlife Site (LWS)
- Landfall at Climping Beach – including the Climping Beach Site of Special Scientific Interest (SSSI)

5.6.4 Specifically related to these locations, IPs have voiced concern around the technical viability of these crossings in absence of detailed ground investigation. The Applicant reaffirms that the provisions of wider Order Limits will ensure the delivery of trenchless crossing construction at these locations. The Applicant has undertaken site visits with trenchless construction contractors and consultants who specialise in the design and construction of trenchless crossing construction. Internal and external technical reviews of these crossings did not identify reasons which would result in trenchless construction at these locations to be undeliverable.

5.6.5 Should it become apparent during detailed design that an alternative trenchless construction method (other than Horizontal Directional Drilling) would be preferential for a trenchless crossing, the Applicant would need to demonstrate that there would be no new or significantly different environmental effects other than those assessed in the ES.

5.6.6 Should an unexpected obstacle or constraint be encountered at a section proposed for open cut trench cable installation where, as a result an additional trenchless crossing would be required, this would be confirmed in the crossing schedule accompanying the stage specific detailed CoCP for approval by the relevant planning authority. The submission of the stage specific CoCP must be accompanied by confirmation that there are no new or materially different environmental effects arising compared to those assessed in the Environmental Statement.

5.6.7 As the detailed design of trenchless crossings will be guided by Site Investigation (SI) information and will consider and manage geotechnical risks associated with the crossings, the Applicant considers it highly unlikely that a drill failure would occur. Hypothetically however, this could be due to localised unexpected ground conditions along the crossing alignment. In this case, this would be encountered during the drilling of the pilot hole and prior to reaming. This would be noticed during pilot drilling and thereby the drill could be withdrawn partially and a new alignment could be drilled that would avoid such ground conditions. The Applicant therefore maintains that even in the case that there are certain unexpected circumstances during construction the trenchless crossing construction can be undertaken successfully.

*How contingency measures and mitigation plans for trenchless crossings are secured in the draft Development Consent Order.*

5.6.8 The Applicant considers that the proposed construction of trenchless crossings as presented in the Crossing Schedule are feasible to deliver and provide appropriate

mitigation to potential harmful impacts to environment that would otherwise be caused by cable construction via open cut trenching methods. The Applicant has retained flexibility in the application to account for ground investigation information, which will be available post-consent, to inform final design and cable routing within DCO Order Limits. This is most notably relevant at Landfall as well as Michelgrove Park and Sullington Hill where wider Order Limits have been drawn (see point 5.4.3). Stage specific construction method statements will be based on the final construction design, and these will be provided to the relevant planning authority for approval in consultation with Natural England as per DCO Requirement 23.

- 5.6.9 The Applicant considers that it has applied the mitigation hierarchy appropriately through design by avoiding impacts arising to those features crossed by trenchless crossings as identified in the Crossing Schedule. The Applicant has applied a proportionate approach to this in securing trenchless crossings of high sensitivity features covered by legislation and/or policy protection including the Climping Beach SSSI, Ancient Woodland and in avoiding significant effects on sites including Local Wildlife Sites. The Applicant will continue to apply the mitigation hierarchy during detailed design (see commitment C-292), for example through cable routing to identify further individual trees that may be retained. This will be detailed in stage specific Vegetation Retention and Removal Plans, secured by Requirement 40 of the draft DCO **[REP5-005]** (updated at Deadline 6).
- 5.6.10 The Applicant will provide an Emergency Response Plan, Pollution Prevention Plan and Pollution Incident Response Plan in accordance with the Outline Code of Construction Practice **[REP5-064]** (updated at Deadline 6) as secured by requirement 22(4)(i) and (j). This will ensure adequate forward planning for pollution prevention from trenchless crossings such as drilling fluid breakout and in the event of an incident, the processes to address this.
- 5.6.11 Section 4.2 of the Outline Code of Construction Practice identifies where trenchless crossings are to be used. Whilst HDD has been assessed as the preferred method of trenchless crossing and as a realistic worst case scenario, it is acknowledged that trenchless crossing method selection and final crossing design will be undertaken based on ground investigation and survey data in coordination with the principal contractor.
- 5.6.12 In the event an alternative trenchless crossing method is identified as required through these investigations, this would be subject to confirmation accompanying the stage specific CoCP that this remains within the parameters assessed in the Environmental Statement and that there are no new or materially different environmental effects.
- 5.6.13 The Applicant has assessed the worst-case scenario in accordance with Section 4.2 paragraphs 4.2.7-8 of NPS EN-1 (DECC, 2011a), Section 2.6 paragraph 2.6.43 of EN-3 (DECC, 2011b), and the policy requirements in Section 4.3, of revised NPS EN-1 (DESNZ, 2023a) paragraphs 4.3.11-12 and Sections 2.6 of revised NPS EN-3 (DESNZ, 2023), specifically paragraphs 2.6.1-3. The impacts of the project have been properly assessed and contingency measures and mitigation plans are secured as necessary.
- 5.6.14 The Applicant's joint-venture partners include RWE Renewables UK Ltd. who are one of the leading developers and operators of renewable electricity generation in the UK. Relevant developments which involved extended onshore export cable construction and trenchless crossings via HDD include projects such as the Triton Knoll and Rampion 1 Offshore Wind Farms. The Applicant's development team

retains extensive expertise in this field and works with reputable partners in the industry.

5.6.15 Accordingly, the Applicant's final submission is:

- that it has committed to the use of trenchless crossings where specified in the Crossing Schedule at Appendix A of the outline CoCP;
- that the application does not seek consent for open cut installation at those locations;
- it is agreed with Natural England that the Environmental Statement considers the use of trenchless crossings and this represents the worst case scenario;
- that in the Applicant's extensive experience of installing cables, it has no reason to believe that the use of trenchless technologies in the committed locations would not be feasible;
- that no substantiated evidence has been provided by any Interested Party to doubt that conclusion;
- that the ExA and the SoS can therefore determine the application in reliance upon the mitigation secured by the use of trenchless technologies in those locations in accordance with the methodologies to be set out in the construction method statement,

*The locations of and sizes of the construction compounds.*

5.6.16 As set out in paragraphs 4.3.4 and 4.3.5 of the Outline Code of Construction Practice **[REP5-064]**, the proposed Order Limits have been widened in areas to accommodate the need for trenchless crossings at the locations defined in the Crossing Schedule (where they are shown with limits of deviation in Appendix A of the Outline Code of Construction Practice **[REP5-064]**). The compounds for trenchless crossings will be up to 50 x 75m, with the landfall compound up to 120 x 100m, with both areas secured through requirement 23 – Construction method statement in the draft Development Consent Order **[REP5-005]** (updated at Deadline 6).

5.6.17 The main compounds for the onshore construction works are the Oakendene substation compound, Oakendene west compound, Washington compound, Climping compound and National Grid Bolney substation extension compound. These compound areas are shown on the Works Plans Onshore **[AS-026]** as Works No. 10. Following requests from IPs, the Applicant provided further clarification in the Outline Code of Construction Practice **[REP5-064]** (paragraph 4.3.5) on what the main compounds would comprise within the envelope of assessment undertaken in the Environmental Statement, this includes welfare, offices, parking, and plant, materials and waste storage.

5.6.18 Local Planning Authorities also requested further information on the selection of compounds and alternatives during the Examination. The Applicant provided summaries including to Relevant Representations **[REP1-017]** (see reference 2.3.6) in this regard to provide further explanation of how each of the locations were determined based on requirements to support the onshore cable construction, onshore substation at Oakendene and the National Grid Bolney substation extension works. The Applicant provided further justification and information on the factors considered in the siting of the compounds in response

to Local Impact Reports, this included application of the mitigation hierarchy to avoid areas of flooding for alternatives to the Climping Compound and seeking to avoid traffic impacts identified by WSCC in relation to alternatives previously considered to the Washington Compound. The compound locations also avoided being sited within the SDNP, though noting that the Washington Compound is in close proximity.

- 5.6.19 The Applicant has employed the mitigation hierarchy to avoid sensitive receptors in the first instance and effective design measures that respond to sensitive locations and receptors in determining the location and size of construction compounds. This accords with the overall approach required for good design and consideration of alternatives set out in Section 4.4 and 4.5 of NPS EN-1 (DECC, 2011a) and Section 4.3 and 4.7 of revised NPS EN-1 (DESNZ, 2023a).

## 5.7 Design

*The acceptability of the extent, justification and definition of:*

*The design choices - offshore*

- 5.7.1 The evolution of the project design is described in the Offshore Design Statement **[REP4-137]**.
- 5.7.2 The Applicant has sought to reduce the effects of the Proposed Development particularly on the South Downs National Park (SDNP) through a reduction in spatial extent of the offshore array area from both scoping and the first statutory consultation stage to the design presented in the Application. Natural England, in its relevant representation **[RR-265]**, recognised that “*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)*”. This is in line with latest NPS EN-1 (DESNZ, 2023a) policy which aims to “*minimise adverse effects on designated landscapes*”, however Natural England did not agree that the Rampion 2 Offshore Design Principles (as identified in Chapter 15: Seascape, landscape and visual impact assessment, Volume 2 of the ES, **[APP-056]** (updated at Deadline 6) fulfil the requirement for ‘good design’ as set out in NPS EN-1 (DECC, 2011a).
- 5.7.3 The Applicant responded to Natural England’s comments in its SVLIA Maximum Design Scenario and Visual Design Principles Clarification Note **[REP1-037]**, providing clarification in respect of the design of the Rampion 2 Offshore Array Area, focusing on the seascape, landscape and visual design principles that have contributed to its design and the maximum design scenario (MDS) for the seascape, landscape and visual impact assessment (SLVIA).
- 5.7.4 The Applicant has also described how it has sought to design the Proposed Development sensitively to mitigate its impacts on the South Downs National Park (Applicant’s Response to Action Points Arising from Issue Specific Hearing 1 **[REP2-018]**), updated in response to the Action Points arising from ISH2 (Applicant’s Response to Action Points Arising from ISH2 and CAH1 for Deadline 5 **[REP5-129]**).
- 5.7.5 As part of the Pre-Application consultation process, the Applicant took account of responses received as well as the results of its assessment of environmental parameters, constraints, technical engineering parameters and scale of generation described in ES Chapter 3: Alternatives, Volume 2 of the ES (paragraphs 3.2.1 – 3.2.44) **[APP-044]** (updated at Deadline 6) so as to reduce the Offshore Array Area.

- 5.7.6 Further design evolution resulted in the reduction of the PEIR Assessment Boundary to the proposed DCO Order Limits (Figure 3.3, Chapter 3: Alternatives – Figures, Volume 3 of the ES) **[APP-075]**. Reductions in the Rampion 2 Offshore Array Area have been made to address Statutory Consultation from stakeholders and comments expressed during Expert Technical Groups (ETG) consultation meetings relating to shipping and navigation, and SLVIA that could be addressed through refinement of the spatial extent of the Rampion 2 Offshore Array Area. These reductions in the developable area and design principles are embedded within the project through the Order Limits and Works Areas secured by the Offshore Works Plan **[PEPD-004]** and Works Area Descriptions provided in full in Schedule 1 of the draft Development Consent Order **[REP5-005]** (updated at Deadline 6).
- 5.7.7 The design principles adopted by the Proposed Development as a result of this exercise are as follows:
- ‘Field of view’ – reducing the field of view or ‘horizontal extent/lateral spread’ of Rampion 2 and the visually combined lateral spread of Rampion 1 and Rampion 2.
  - ‘Proximity’ - increasing the distance of Rampion 2 from most sensitive areas of coastline to reduce the apparent height of WTGs and increase sense of remoteness (with consequential benefits to other design principles).
  - ‘Wind farm separation zones’ - achieving a separation between Rampion 1 and Rampion 2 arrays, with a clear distinction and clear lines of sight between arrays.
  - ‘Separation foreground’ - avoiding juxtaposition of larger Rampion 2 WTGs in front of smaller Rampion 1 WTGs, to balance arrays and apparent turbine size, insofar as possible.
- 5.7.8 The SDNPA consider that the proposed Design Principles do not go far enough and do not guarantee that sufficient measures to limit the impact on seascape will be undertaken, however in response to the Examining Authority’s Action Points from ISH2 **[REP4-085]**, the SDNPA confirmed that it considers ‘seascape’ would not be a singular issue on which to withhold consent, subject to 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 that a 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. The Applicant explained how controls over the final design and layout are secured through the term of the draft DCO and the conditions of the dMLs in **[REP5-122** – see table 2-3, comments in response to SDNPA response to Action Point 37]. Details of the mechanism to secure the financial contribution is explained further in **Section 9** below.
- 5.7.9 The Applicant notes that Natural England considers no location in Zone 6 is acceptable but notes that the SDNPA recognise that “...if it were deemed to be unavoidable, the area to the south of R1 is likely to be less impactful” **[REP3-071]**. The Applicant agrees with the SDNPA that the area to the south of Rampion 1 is less impactful than areas to the east and considers that the area to the south of Rampion 1 is the optimal location within Zone 6 (avoiding the area to the east).
- 5.7.10 In response to Natural England’s comments that the Proposed Development has not followed the approach taken by the Rampion 1 project, the Applicant considers



that due regard has been given to the design principles in the Rampion 1 Design Plan (Commitment C-61, Chapter 15: Seascape, landscape and visual impact assessment, Volume 2 of the ES, Table 15-26 **[APP-056]** (updated at Deadline 6)), as described further in the SVLIA Maximum Design Scenario and Visual Design Principles Clarification Note **[REP1-037]** and in the Applicant's Responses to Stakeholder's Replies to Examining Authority Written Questions (SLV1.3) **[REP4-079]**. While the Applicant considers that it would not be appropriate to replicate the Rampion 1 design principles in their entirety and that the Proposed Development should respond to its own design parameters and principles, it has incorporated many elements of the Rampion 1 design principles including:

- limiting the Horizontal Field of View (HfOV) of WTGs from the SDNP and Sussex Heritage Coast;
- increasing the distance of WTGs from the Sussex Heritage Coast of the SDNP;
- through the 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 turbine layout.

5.7.11 The distance between the array area and the Sussex Heritage Coast of the SDNP has been maximised as far as possible, taking account of the siting, operational and other relevant constraints. The increased distance of the Proposed Development from the Heritage Coast is evident in Figure 15.13 Comparative ZTV, Chapter 15: Seascape, landscape and visual impact assessment – Figures (Part 1 of 8), Volume 3 of the ES **[APP-088]** and from the increased distance of the Proposed Development from a number of viewpoints in the Heritage Coast (Table 15-27, Chapter 15: Seascape, landscape and visual impact assessment, Volume 2 of the ES **[APP-056]** (updated at Deadline 6)).

5.7.12 The Applicant welcomes Natural England's relevant representation **[RR-265]** that the inclusion of the 'wind farm separation zones' Design Principle successfully acts to significantly reduce seascape and visual effects on the most sensitive views from parts of the SHC within the SDNP. Given the spatial extent of the DCO Order Limits to both the south and west of Rampion 1, the Applicant considers that it is not possible to provide clear lines of sight between Rampion 1 and all of the Proposed Development at the same time (i.e. in the same views). The design principle focused on providing wind farm separation zones between each of the western and eastern array areas with Rampion 1, so that they will in particular key views, be viewed with a clear distinction and so the apparent scale difference of WTGs would be minimised, insofar as possible.

5.7.13 A hybrid scheme is not proposed for Rampion 2, the Applicant has committed to a uniform turbine type and this is secured through Deemed Marine License (DML) condition 1(1). At Issue Specific Hearing 2 (May 2024), the South Downs National Park Authority accepted 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 the Draft Development Consent Order **[REP5-005]** (updated at Deadline 6) adequately restricts the Wind Turbine Generators (WTGs) to a uniform height and rotor diameter. The Applicant does however consider that it has adhered to the intent of Rampion 1 Design principle (iii) to locate the largest turbines to the south-west portion of the proposed DCO Order Limits.

5.7.14 In order to balance the apparent scale of the Rampion 1 and the Proposed Development WTGs, insofar as possible, the Applicant has reduced the easterly spatial extent of wind farm array area and avoided WTGs in the north-east corner next to Rampion 1, such that the scale juxtaposition of larger WTGs in front of smaller WTGs is avoided in views from the SDNP and the Heritage Coast. Apparent scale differences and complexities in aesthetic appearance between Rampion 1 and the Proposed Development WTGs have been reduced, through the revised spatial extent of the array area (avoiding areas to the east of Rampion 1) and the use of windfarm separation zones. The design changes to the spatial extent of the DCO Order Limits, shown in Figure 15.2, Chapter 15: Seascape, landscape and visual impact assessment – Figures (Part 1 of 8), Volume 3 of the ES **[APP-088]** provides notable benefits in views from the Heritage Coast of the SDNP, evident in the comparative wirelines presented in Figures 15.93 to 15.109, Chapter 15: Seascape, landscape and visual impact assessment – Figures (Part 8 of 8), Volume 3 of the ES **[APP-095]**.

*Design choices – onshore*

5.7.15 The Applicant has detailed the evolution of the design of the onshore elements of the Proposed Development in Chapter 3: Alternatives, Volume 2 of the ES **[APP-044]** (updated at Deadline 6). The location of the onshore cable route was defined initially by the selection of the landfall and grid connection points, see Section 3.3 of Chapter 3: Alternatives, Volume 2 **[APP-044]** (updated at Deadline 6) and Section 3.4 with respect to incursion into the SDNP with further discussion in **Section 5.1**.

5.7.16 The design evolution was informed by several consultation exercises and additional stakeholder engagement in order to reduce the effect on the environment as far as possible and mitigate for residual effects as documented in Section 3.4 of Chapter 3: Alternatives, Volume 2 **[APP-044]** (updated at Deadline 6). This description includes the consideration of multiple routes to cross the SDNP which balanced engineering, environmental, landowner and cost considerations.

5.7.17 The selection of the onshore substation site at Oakendene is documented in Section 3.6 – Chapter 3: Alternatives, Volume 2 **[APP-044]** (updated at Deadline 6) and the design is discussed further below in paragraphs 5.5.28 – 5.5.29 of this Section below.

*The design parameters*

5.7.18 The scale of generation required of the Project is described in Chapter 3: Alternatives, Volume 2 of the ES **[APP-044]** (updated at Deadline 6) (paragraphs 3.2.14 – 3.2.19). There is an urgent need for new renewable energy infrastructure, as expressed in national energy and planning policy (NPS EN-1 (DECC, 2011a) and others). The recently designated Overarching National Policy Statement for Energy (EN-1) (DESNZ 2023a) described this as a critical national priority. The starting assumption for project design was therefore to maximise the potential for renewable energy generation, within the environmental and technical constraints of the proposed DCO Order Limits.

5.7.19 NPS EN-3 (DESNZ, 2023) acknowledges in paragraph 2.8.351 that, "*Where a proposed offshore wind farm is within sight of the coast, there may be adverse effects. The Secretary of State should not refuse to grant consent for a development solely on the ground of an adverse effect on the seascape or visual amenity unless:*

- they consider that an alternative layout within the identified site could be reasonably proposed which would minimise any harm, taking into account other constraints that the applicant has faced such as ecological effects, while maintaining safety or economic viability of the application; or
- they take account of the sensitivity of the receptor(s) and impacts on the statutory purposes of designated landscapes as set out in Section 5.10 of EN-1; and decide that the harmful effects to outweigh the benefits of the proposed scheme. See also Critical National Priority (Section 3 of NPS EN-3 (DESNZ, 2023))”.

5.7.20 Section 3 of NPS EN-3 (DESNZ, 2023) advises that, “A policy set out at Section 4.2 of EN-1 which applies a policy presumption that, subject to any legal requirements (including under section 104 of the Planning Act 2008), 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 hierarchy”.

5.7.21 It is the Applicant’s position that it has appropriately applied the mitigation hierarchy in its design of the Proposed Development

*The height of the turbines and number and size scenarios*

5.7.22 The Applicant set out the maximum number of WTGs for the Proposed Development in Chapter 4: The Proposed Development, Volume 2 **[APP-045]** (updated at Deadline 6), which states, at paragraph 4.1.13, that the Proposed Development will comprise of ‘up to 90 offshore wind turbine generators and associated foundations’. This maximum number is secured through the description of Work No 1 and in Requirement 2 of the draft Development Consent Order (DCO) **[REP5-005]** (updated at Deadline 6). This represents the maximum number of turbines that could be installed for the Proposed Development, should it achieve consent. The same Requirement in the draft DCO also sets the maximum rotor diameter (295m), maximum tip height (no more than 325m from Lowest Astronomical Tide (LAT) to the tip off the vertical rotor blade), as well as the minimum air gap of 22m to MHWS and also secures that the Proposed Development will comprise turbines of a uniform height and rotor diameter. The Applicant would highlight that the controls provided within the draft DCO do not permit a scenario where the maximum number of turbines (90) of the largest size (295m rotor diameter and 325 tip height) can be constructed as this is controlled by the maximum total rotor swept area of 4.45km<sup>2</sup>. This maximum total rotor swept area is also set out in Requirement 2 of the draft DCO **[REP5-005]** (updated at Deadline 6).

5.7.23 The rotor swept area for an individual turbine increases with its rotor diameter, and so, as there is a total maximum rotor swept area for the Proposed Development set within the draft DCO, the number of turbines permitted decreases as the turbine rotor diameters increase. To be clear, adherence to the total maximum swept area (4.45km<sup>2</sup>) means that it will not be possible to construct the project with the greatest number of the largest turbines.

5.7.24 Further detail on the way in which the total rotor swept area operates to control the number of turbines that can be installed as the rotor diameters increase has been presented in Table 4-2 of the Applicant’s response to the Examining Authority’s request for further information, submitted at the Pre-Examination Procedural Deadline **[PEPD-041]**. It should be noted that these are not ‘actual, currently available’ WTGs; the dimensions of the rotors have been used to

illustrate the way in which the control operates and to provide a range of turbine numbers that would be permitted within the draft DCO requirements for the specified rotor diameters. There is thus a range of development scenarios. Using the maximum rotor diameter dimensions of 295m set out in Requirement 2 of the draft DCO, the maximum number of turbines is limited to 65. For the smaller turbines, this equates to 90. It should also be noted that it would be possible to bring forward a project using turbines of smaller dimensions than the 'smaller turbines', however in such a case the control is in the form of the maximum number that can be permitted (i.e. 90).

- 5.7.25 Within the Environmental Statement, the scenarios of 90 of the smaller turbines or 65 of the larger turbines have been used in considering the worst-case, as relevant and appropriate to a particular topic, however in some instances a topic may identify the 65 larger WTG / foundation scenario as worst-case for the assessment of one particular impact and the 90 smaller WTG / foundation scenario for another within the same chapter. As with all impacts assessed within the ES, the justification for selection of what parameters present the worst-case for assessment is set out as relevant to specific impacts and receptors for the given topic. Details of the justification for selecting the appropriate maximum design scenario are presented in each chapter, which then presents assessment on this basis. The Applicant also notes that for many topics, it is the foundation parameters that are of relevance to the assessment rather than the number and size of the turbines themselves. Importantly, there are no development scenarios permitted by the requirements in the draft DCO which could give rise to effects greater than those assessed and presented in the Environmental Statement
- 5.7.26 The MDS for seascape, landscape and visual is described in Chapter 15: Seascape, landscape and visual impact assessment, Volume 2 of the ES **[APP-056]** (updated at Deadline 6) Section 15.7 'Basis for ES assessment', which provides commentary on the appropriate reasonable MDS adopted in Table 15-25. The MDS for seascape, landscape and visual assumes 65 maximum number of WTG with the highest blade tip height (325 m) and largest rotor diameter (295 m) and a minimum WTG spacing of 1130 m based on an indicative MDS layout shown in Figure 15.1, Chapter 15: Seascape, landscape and visual impact assessment – Figures (Part 1 of 8), Volume 3 of the ES **[APP-088]**.
- 5.7.27 There are likely to be larger WTGs available than those proposed, however the Applicant has designed the maximum WTG parameters (325m blade tip height) in the Draft Development Consent Order **[REP5-005]** (updated at Deadline 6) with regard to the potential effects of the Proposed Development on designated landscapes, the maximum extent of the MDS assessed in the ES. These maximum parameters will ensure that the turbines installed cannot exceed the maximum height of 325m, and the maximum number of such large turbines (65, as restricted through the application of the restriction on rotor swept area) as assessed in the Environmental Statement, to ensure that the potential effects of the Proposed Development on receptors including designated landscapes as described in the Environmental Statement are not exceeded.

#### *The onshore substation*

- 5.7.28 The design of the infrastructure for the onshore substation is dictated largely by its function, as recognised by the criteria for good design in NPS EN-1. Therefore, the Applicant is limited in the design choices for the infrastructure that makes up the onshore substation. However, the Applicant has submitted a Design and Access Statement (DAS) **[REP5-023]** to ensure that the impacts arising from the substation are minimised and good design has been applied to those elements of the Proposed Development less restricted by function. This DAS contains design

principles that are secured by draft DCO **[REP5-005]** (updated at Deadline 6) Requirement 8 with which detailed design must comply including:

- optimising the design within the development parameters including location within the Order Limits as well as height of the electrical infrastructure and buildings;
- inclusion of principles guiding the architectural strategy for the appearance of visible structures to soften their appearance including consideration of the colour and roofline where possible;
- maximising the retention of existing trees and other vegetation including for screening;
- advance planting to screen construction works and allow planting to mature in advance of completion;
- ecological mitigation and enhancement;
- flood risk and drainage standards (expanded upon in the Outline Operational Drainage Plan [REP5-062]; and
- mitigation for noise and lighting.
- See Section 5.8 for further information on Landscape and Visual mitigation and related provisions of the Outline Landscape and Ecology Management Plan [REP5-072] (updated at Deadline 6).

5.7.29 The Applicant has implemented a series of design principles to minimise harm associated with offshore array and onshore substation. The approach to the design of the offshore array accords with in NPS EN-3 (DECC, 2011b) specifically paragraph 2.6.210 and revised NPS EN-3 (DESNZ, 2023) paragraphs 2.8.263-264. The design choices taken for the offshore array and onshore elements of the Proposed Development reflect an iterative process which has been outlined in Chapter 3: Alternatives, Volume 2 of the ES **[APP-044]**. The Applicant's approach to the design of the offshore and onshore elements of the Proposed Development accords with the NPS's overall approach required for good design and the consideration of alternatives set out in Section 4.4 and 4.5 of NPS EN-1 (DECC, 2011a) and Section 4.3 and 4.7 of revised NPS EN-1 (DESNZ, 2023a) and good design of energy infrastructure in NPS EN-3 (DECC, 2011b) paragraph 2.4.2 and revised NPS EN-3 (DESNZ, 2023) paragraph 2.5.2.

## 5.8 **Ecology (Offshore and Onshore)**

*The potential effects, including cumulative effects from construction and operation of the proposed offshore WTGs, substations and offshore cable routes, and for ongoing management and maintenance, upon:*

*Benthic, subtidal and intertidal ecology*

Minimising cable protection

5.8.1 In the Applicant's Post Hearing Submission – Issue Specific Hearing 1 Appendix 13 – Further Information for Action Point 45 and 46 – Physical Processes and Benthic **[REP1-030]**, the Applicant confirmed that when designing the cable protection solution, the key driver will be to ensure it remains in place over the lifetime of the Proposed Development with minimal operational intervention. As

such, subsea cable burial will be the preferred option for cable protection. The Applicant submitted an Outline Cable Burial Risk Assessment **[REP5-123]** and Outline Cable Specification and Installation Plan **[REP5-216]** at Deadline 5. This approach remains within the parameters assessed in the Environmental Statement, but with the aim to minimise the use of cable protection where practicable to do so.

#### Use of gravel bags to ground vessels

- 5.8.2 The Proposed Development has discounted the use of floatation pits as an option. However, a cable installation method needs to be available to the Project as an alternative to vessel beaching (if the ground conditions and/or the vessel utilised do not allow for this). It is proposed that temporary gravel bag beds are used, if required. These would have a footprint equivalent to the cable installation vessel and allow the vessel to beach at a location where the ground conditions will not allow direct beaching on the seabed. The use of gravel bags is regarded as the maximum design scenario in comparison to beaching the cable installation vessel, due to the length of time the gravel bag beds would need to remain on the seabed and the total area involved.
- 5.8.3 The alternatives to the use of floatation pits was discussed within the Chapter 9: Benthic, subtidal and intertidal ecology, Volume 2 of the ES **[REP5-029]** (updated at Deadline 6) and further detail and assessment of the use of gravel bag beds are set out in section 4 of the Applicant's Post Hearing Submission – Issue Specific Hearing 1 Appendix 13 – Further Information for Action Point 45 and 46 – Physical Processes and Benthic **[REP1-030]**. The assessment presented in **[REP1-030]** has subsequently been added to the Environmental Statement, which is to be submitted at Deadline 6 (Chapter 9: Benthic, subtidal and intertidal ecology, Volume 2 **[REP5-029]** (updated at Deadline 6)). 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 **[REP5-129]** submitted at Deadline 5: briefly summarised this includes (1) the requirement for post-consent site investigation campaigns and detailed cable burial risk assessment; (2) installation methodologies will vary across seabed conditions and this will be considered during the detailed construction design stage; (3) an appraisal of specific environmental performance between installation providers will be undertaken during the design phase, as it is expected this will vary significantly. Importantly, this development does not give rise to effects greater than those assessed and presented in the Environmental Statement and has been accommodated within the existing maximum design scenario.
- 5.8.4 Natural England remains concerned that full removal of gravel bags may not be possible, and the Applicant should consider what measures may need to be put in place to mitigate the potential impacts on underlying habitats from loose gravel. As set out in the Applicant's response to the ExA's Second Written Questions **[REP5-119]**, 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.
- 5.8.5 The Applicant understands the concern and potential environmental harm that could be caused by not removing gravel bags after the construction. However, the Applicant is unable to provide an unconditional commitment for the retrieval of all gravel bags due to the following reasons: (1) Detailed design of Landfall construction, vessel specification and detailed survey of the intertidal and offshore

area in the Export Cable Corridor will be undertaken post-consent. Detailed design will take environmental aspects, such as those associated with the use and retrieval of gravel bags into consideration. This survey information and design work will determine the requirement for gravel bags and assess potential methods and the feasibility of their retrieval; and (2) As per the Construction, Design and Management (CDM) 2015 regulations, the Applicant must consider Health and Safety aspects during planning and design stages to ensure potential Hazards are eliminated as far as possible. A firm commitment to remove all gravel bags may lead to a situation where it may be necessary to rely on human diving activities for the retrieval of gravel bags, which are high risk activities. The Applicant will explore methods of removing gravel bags safely and discuss these with installation vessel operators post-consent.

Avoidance of sensitive features/ minimisation of impacts through micro-siting and other mitigations

- 5.8.6 The Applicant has adopted an appropriate approach to minimising potential impacts to priority habitats and species in the intertidal and subtidal environment, with avoidance through informed design/micrositing and, where avoidance is not possible, minimisation of impacts through mitigation as set out within the In Principle Sensitive Features Mitigation Plan **[REP5-082]**. This is a Principal Area of Disagreement identified by Natural England. The Applicant has based its assessment of cable burial potential on current data, which is considered appropriate at this pre-consent stage and provided a response in 8.25 Applicant's Response to Action Points Arising from Issue Specific Hearing 1 **[REP1-018]**, setting out why it is not feasible to undertake additional offshore geotechnical surveys at the pre-consent stage. A full Cable Burial Risk Assessment based on the results of the pre-construction surveys (in accordance with Schedule 12, Condition 16 of the draft Development Consent Order **[REP5-005]** (updated at Deadline 6) will be undertaken when the final cable design parameters are determined post-consent.
- 5.8.7 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 cable burial risk assessment **[REP5-123]** 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. 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 **[REP5-129]** submitted at Deadline 5 (and is briefly summarised in paragraph 5.8.3.

Impacts on the specific benthic features of Kingmere and Offshore Overfalls MCZs

- 5.8.8 As detailed within Chapter 6: Coastal processes, Volume 2 **[APP-047]** (updated at Deadline 6) 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 **[REP5-029]** (updated at Deadline 6), gives due consideration of the characterising biotopes to increased SSC and sediment deposition and the nearby Kingmere and Offshore Overfalls MCZ. The results detail that any impact to benthic features of the MCZ's are 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. The Applicant considers the assessment presented to be robust and adequate.

- 5.8.9 In addition, the Applicant has included the Commitment C-273 to restrict works within the export cable corridor area 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 **[REP5-082]**, which is secured in Condition 11(1)(k) of the dMLs (Schedules 11 and 12 of the draft DCO **[REP5-005]** (updated at Deadline 6).

#### Post-construction monitoring and adaptive management

- 5.8.10 As set out in the Offshore In Principle Monitoring Plan **[REP5-084]** (updated at Deadline 6), the requirements 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 *Sabellaria spinulosa* 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. Where no stony reef, peat or clay exposures, and/or *S. spinulosa* 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 with the MMO 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.
- 5.8.11 The assessment presented within Chapter 9: Benthic, subtidal and intertidal ecology, Volume 2 of the ES **[REP5-029]** (updated at Deadline 6), provides for the worst-case scenario that some impact to sensitive features is unavoidable from Rampion 2. The Applicant does not consider there to be a need for establishing any further adaptive management measures associated with impacts arising for these works. However, following review of the post-construction survey works on benthic resources (if required), adaptive management will be developed and discussed if monitoring show impacts greater than anticipated; this wording has been added to the Offshore In Principle Monitoring Plan **[REP5-084]** (updated at Deadline 6).

#### Fish and shellfish ecology

##### *Potential impacts to seahorses from underwater noise*

- 5.8.12 A precautionary assessment of the potential impacts of Rampion 2 on seahorse was undertaken in Chapter 8: Fish and Shellfish Ecology, Volume 2 **[REP5-027]** (updated at Deadline 6) and subsequently in the Marine Conservation Zone Assessment **[APP-040]**, which concluded no significant effects on seahorse on the basis of the application of mitigation throughout the piling campaign, as set out in the In Principle Sensitive Features Mitigation Plan **[REP5-082]**. The mitigation includes the use of DBBC throughout the piling campaign (as secured



in commitment C-265 (Commitments register **[REP5-086]** (updated at Deadline 6)). Natural England however, maintains that there is significant risk of hindering the achievement of the conservation objectives in relation to Selsey Bill and The Hounds, Bembridge, Beachy Head West and Beachy Head East MCZ, principally due to concerns about the efficacy of the proposed noise abatement systems. This is a Principal Area of Disagreement with Natural England. This position is reflected by the MMO, as the MMO defer to Natural England on this matter. The Applicant has undertaken additional work demonstrating the efficacy of the proposed noise abatement systems at the Rampion 2 site, this was submitted to the Examining Authority at Deadline 4, in Information to Support Efficacy of Noise Mitigation / Abatement Techniques with Respect to Site Conditions at Rampion 2 Offshore Windfarm **[REP4-067]**. The In Principle Sensitive Features Mitigation Plan **[REP5-082]** was subsequently updated to reflect the outputs of this study, and on the basis of the revised underwater noise modelling, the Applicant is confident that the conservation objectives of the Selsey Bill and The Hounds, Bembridge, Beachy Head West and Beachy Head East MCZ will not be hindered, as the mitigated noise levels that reach these locations are predicted to be low enough that any risk of disturbance will not reach levels of concern. With the noise mitigation in place and performing as anticipated, the noise propagation modelling shows the extents of disturbance levels of noise will not reach the MCZ sites that have seahorse designated as features and thus noise generated from piling works will not pose a risk of hindering the Conservation Objectives for seahorse features at these sites.

*Potential impacts to nesting black seabream from underwater noise*

- 5.8.13 A precautionary assessment of the potential impacts of Rampion 2 on black seabream was undertaken in Chapter 8: Fish and Shellfish Ecology, Volume 2 **[REP5-027]** (updated at Deadline 6) and subsequently the Marine Conservation Zone Assessment **[APP-040]**, which concluded no significant effects on black seabream on the basis of the application of mitigation during the black seabream nesting season, as set out in the In Principle Sensitive Features Mitigation Plan **[REP5-082]**. The Plan facilitates spatial and temporal zoning for piling activities, the use of noise abatement systems, and a sequencing approach to piling starting in locations furthest from the Kingmere MCZ. This remains a Principal Area of Disagreement with Natural England and the MMO, who maintain that, on the basis of uncertainty over an appropriate noise disturbance threshold for black seabream, piling presents a risk of hindering the conservation objectives of the Kingmere MCZ, if a complete piling exclusion from 1 March to 31 July is not implemented. As set out in Table 2-16, row FS2.1, Applicant's Responses to Examining Authority's Second Written Questions (ExQ2) **[REP5-119]**, the Applicant maintains that such a restriction would have significant implications for the construction of the Project. Specifically, the implementation of a full piling ban would have a direct effect on the construction schedule of the project by prohibiting construction in the months of the year with the most accommodating weather conditions. Until the final design of the turbines and foundations, and until comprehensive geotechnical surveys are completed, it is difficult to determine with a high level of confidence, what the magnitude of the impacts on the construction schedule would be. However, preliminary construction modelling has strongly indicated that a full piling ban would be extremely challenging, leading to an additional year or more of offshore installation activity being required.
- 5.8.14 Underwater noise mitigation measures for black seabream include the application of a piling restriction across the western part of the array area from March through to June, meaning that there would still be piling within eastern part of the array area which would be subject to mitigation using the combination of DBBC and another noise abatement measure. During July, if piling is undertaken in the

western part of the array area, it will be mitigated through the definition of exclusions zones (established by use of the 141 decibel behavioural threshold). Any piling operations outside of the exclusion zones will again be subject to mitigation using the combination of DBBC and another noise abatement measure to ensure this threshold level will not be exceeded within the Kingmere MCZ at any point during the black seabream spawning season. The Applicant considers that March to June is the key sensitive period based on data available from surveys and in the literature. Additionally, Rampion 1 was subject to a piling restriction between 15 April and 30 June imposed, thus allowing unmitigated piling in both March and July, and which subsequently had no apparent adverse impacts on breeding identified following piling. Whilst the hammer energies proposed for Rampion 2 are greater than those employed at Rampion 1, and some of the piling locations within the Rampion 2 proposed array area are closer to the Kingmere MCZ, the levels of noise received at the Kingmere MCZ from both projects are predicted to be comparable as set out in Appendix 8.4: Black seabream Underwater Noise Technical Note and Survey Results **[PEPD-023]**, based on the mitigated piling proposed for Rampion 2 in comparison to the unmitigated piling undertaken at Rampion 1 as identified in Table 2-16, row FS2.1 of the Applicant's Responses to Examining Authority's Second Written Questions (ExQ2) **[REP5-119]**.

- 5.8.15 The zoning plan has been based on a precautionary disturbance threshold of 141 dB Sound Exposure Level from a single strike (SELs) as defined by Kastelein et al. (2017). This threshold is based on the best available data and evidence for a relevant proxy fish species, an approach that aligns with current practice when resolving issues such as data gaps and uncertainties. Due to the large number of species, scenarios and conditions that could occur, and the complexity of testing them, not all fish species benefit from specific research data. As such, the most used general guidelines for noise impacts on fish (Popper et al., 2014) do not provide thresholds for individual species but rather collect species into groups with similar hearing ability. As the Applicant must identify a threshold that would represent a noise sufficient to lead to population-level hinderance of black seabream nesting and breeding, it has proposed the use of Kastelein et al. (2017), which showed a mild, initial response reaction (short-lived change in swim direction or speed) to underwater piling noise at 141 dB SELs in 50% of larger tested sea bass; as sea bass is a similar species in the same hearing category, this species was deemed representative. Natural England do not support a behavioural threshold being derived from proxy species or research using playback sound or based on captive fish (as per Kastelein et al.). As Natural England are not able to agree any noise threshold for the species, agreement on the suitability of the proposed mitigation strategy, which is necessarily based on setting a threshold, is not possible and this therefore remains a Principal Area of Disagreement with Natural England. The MMO has requested mitigation informed by a disturbance threshold of 135 dB SELs, although does maintain that a threshold is unlikely to be agreed and therefore the use of 141 dB SELs also remains a Principal Area of Disagreement with the MMO.
- 5.8.16 The Applicant maintains that 141 dB SELs is an appropriate threshold, however it has set out the proposed mitigation measures for black seabream as defined using the 135dB SELs disturbance threshold in Appendix K of the Applicant's Responses to the Examining Authority's First Written Questions (ExQ1) **[REP3-051]** for reference. The Applicant maintains that mitigation to achieve a noise threshold level of 141 dB SELs is appropriate and sufficient to avoid the risk of behavioural response in black seabream during its spawning and nesting phase, and that compliance with such will ensure that the Conservation Objectives for black seabream as a feature of the Kingmere MCZ will not, therefore, be hindered.

- 5.8.17 Natural England and the MMO have raised concerns about the efficacy of the proposed use of noise abatement. The Applicant has undertaken additional work demonstrating the efficacy of the proposed noise abatement systems at the Rampion 2 site, this was submitted to the Examining Authority at Deadline 4, in Information to Support Efficacy of Noise Mitigation / Abatement Techniques with Respect to Site Conditions at Rampion 2 Offshore Windfarm **[REP4-067]**. The In Principle Sensitive Features Mitigation Plan **[Rep5-082]** was subsequently updated to reflect the outputs of this study, and on the basis of the revised underwater noise modelling, the Applicant is confident that the proposed mitigation will ensure that the conservation objectives of the Kingmere MCZ will not be hindered. Natural England and the MMO however, remain cautious about the efficacy of the proposed mitigation in water depths of over 40m. This is addressed further below.
- 5.8.18 The Applicant considers the proposed 141dB SELss threshold to be appropriately precautionary for a non-specialist hearing group of fish and represents the best available data drawn from appropriate proxy species; an approach that is both in line with common practice in situations where definitive species-specific data are lacking and preceded by consent decisions previously made. Based on available evidence and the delivery of the mitigation strategy, which will be subject to verification during the monitoring of piling noise levels during the installation of the earliest foundations and the adaptive management measures set out within the In Principle Monitoring Plan **[REP5-084]** (updated at Deadline 6), the Applicant considers that the risk of disturbance to black seabream during the relevant spawning period will be below the level at which either significant effects could arise on the regional population or that at which the feature's Conservation Objectives could be hindered at the Kingmere MCZ.

*Potential impacts to spawning herring from underwater noise*

- 5.8.19 A precautionary assessment of the potential impacts of Rampion 2 on spawning herring was undertaken in Chapter 8: Fish and Shellfish Ecology, Volume 2 **[REP5-027]** (updated at Deadline 6) and confirmed no significant effects on spawning herring. Figure 8.10 of Chapter 8: Fish and Shellfish Ecology, Volume 3 of the Environmental Statement **[REP1-007]** sets out a series of seabed sediment assessments against criteria for potentially suitable habitat for herring spawning. The assessment highlights areas that in theory, could be suitable for herring spawning, but this habitat is widely occurring in the seas around the UK and the assessments do not identify areas of known herring spawning. In respect of Figure 8.10 of Chapter 8: Fish and Shellfish Ecology, Volume 3 of the Environmental Statement **[REP1-007]**, the MMO requested the Applicant revise the spawning habitat suitability assessments in accordance with the MarineSpace (2013) methodology. This was provided at Deadline 1, in Appendix 9 – Further Information for Action Points 38 and 39 – Underwater Noise **[REP1-020]**, and subsequently revised at Deadline 4, Appendix 9 – Further Information for Action Points 38 and 39 – Underwater Noise **[REP4-061]** and again at Deadline 6, Applicant's Post Hearing Submission – Issue Specific Hearing 1 (**Document reference 8.25.1**) following feedback from the MMO. This is currently a Principal Area of Disagreement with the MMO, however the Applicant is confident that this matter will be resolved with the MMO following the submission and review of the Applicant's Deadline 6 update.
- 5.8.20 The assessment of underwater noise impacts on spawning herring concluded no significant effects on the Downs herring stock due to the lack of interaction of the worst-case impact ranges from underwater noise (based on the highly precautionary 135 dB SEL contour to establish behavioural impact ranges, the use of which the Applicant does not support) with the Downs stock herring spawning

ground (as defined by Coull et al., 1998). This is a Principal Area of Disagreement with the MMO, who maintain that there is the potential for a behavioural impact to spawning herring, on the basis that using the MMO's preferred threshold (135 dB SEL) there is an overlap of the behavioural impact noise contour arising from unmitigated piling with areas of high densities of herring larvae. It is on this basis that the MMO consider it necessary for a seasonal piling restriction to be implemented in order to prevent disturbance to spawning herring and their eggs and larvae at the Downs spawning ground during the spawning period of 1 November to 31 January. The Applicant maintains their position that there will be no population level effect on spawning herring at the Downs spawning ground, as there is no overlap of the recognised spawning ground at a noise level that will disturb spawning adult herring (186dB SELcum), and no interaction of noise at injurious levels (210dB SELcum) with areas of high larval abundances. Notwithstanding this, the Applicant has committed to the use of DBBC throughout the piling campaign (commitment C-265), to further reduce the impact ranges of underwater noise (including behavioural effect ranges) for spawning herring. The mitigated impact ranges afforded by the use of DBBC (and informed by additional work demonstrating the efficacy of the proposed noise abatement systems at the Rampion 2 site as detailed in Information to Support Efficacy of Noise Mitigation / Abatement Techniques with Respect to Site Conditions at Rampion 2 Offshore Windfarm [REP4-067] (submitted to the Examining Authority at Deadline 4) are presented relative to the herring spawning ground and eggs and larvae data, in the In Principle Sensitive Features Mitigation Plan [REP5-082]. The Applicant remains confident, that on the basis of the mitigated underwater noise contours presented in the In Principle Sensitive Features Mitigation Plan [REP5-082], which do not interact with the herring spawning ground or areas of the highest densities of herring larvae even when adopting the 135 dB SEL threshold, there is no requirement for a seasonal piling restriction for herring. The MMO are of the position, that if the herring habitat suitability assessments are updated following the MarineSpace (2013) methodology, and the MMO consider the noise reduction of 15dB achievable in the environmental conditions of the site, they may deem a seasonal piling restriction for herring not to be required.

- 5.8.21 **Efficacy of noise abatement systems, untested on the proposed diameter of piles, concerns around water depth and conditions of the site. Why testing of mitigation is not possible.**
- 5.8.22 Natural England and the MMO have raised concerns regarding the efficacy of the proposed noise abatement systems (as detailed in the In Principle Sensitive Features Mitigation Plan [REP5-082]) in the context of the environmental conditions of Rampion 2. Specifically, it was requested that demonstration was provided of the efficacy of the mitigation to reduce noise to an agreed level within the MCZ's, in the environmental conditions of the Rampion 2 array area, including consideration of factors such as depth, the speed of local currents, wave height and speed, and geology was requested. Additional work has been undertaken by the Applicant demonstrating the efficacy of the proposed noise abatement systems in the environmental conditions that exist at the Rampion 2 site as detailed in Information to Support Efficacy of Noise Mitigation / Abatement Techniques with Respect to Site Conditions at Rampion 2 Offshore Windfarm [REP4-067] (submitted to the Examining Authority at Deadline 4). Based on the outputs of this study, it is apparent that 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 15dB noise reduction can be achieved through the use of DBBC, and 20dB noise reduction can be achieved through the combined use of DBBC and another noise abatement system. The In Principle Sensitive Features Mitigation Plan [REP4-053] (updated at Deadline 6) has been updated to reflect the outputs

of this work. However, Natural England and the MMO remain concerned about the efficacy of the proposed noise abatement measure in depths of over 40m.

- 5.8.23 The Information to Support Efficacy of Noise Mitigation / Abatement Techniques with Respect to Site Conditions at Rampion 2 Offshore Windfarm [REP4-067] report identifies that the efficiency of bubble curtains in waters in excess of 40 m depth may reduce by 1-2 dB, however the report also identified that the use of an enhanced Big Bubble Curtain (eBBC) (the enhanced big bubble curtain technology makes use of a bigger diameter hose and more compressors, in order to increase the air volume) as part of the DBBC system could bring up to 2 dB more noise reduction, which is expected to compensate the negative effect of water depths up to 50 m.
- 5.8.24 Based on preliminary studies of possible layouts for the offshore wind farm the Applicant expects around 30% of the turbines locations to be in water depths of over 40 m. The majority of this 30% will be in the range of 40-50m and a few locations in the range of 50-55m. With the current available technology for foundation installation, it is more complicated to install monopiles at depths above 55m, due to construction and installation limitations in handling foundation structures of such lengths and weights, as well as in their manufacture. The Applicant notes, however, that as the technologies evolve to facilitate easier production and installation of larger foundations, deeper water areas become more feasible and economic.
- 5.8.25 The MMO and Natural England have suggested trialling of the piling noise mitigation measures ahead of the construction phase of the Proposed Development, however the Applicant considers a pre-construction field test is not feasible. Any such field test requires a substantial lead-in period in order to collect geotechnical site investigation data for the trial location, as well as for the procurement, detailed design and manufacture of a specific foundation pile. Substantial time, and significant additional expenditure, is also required to complete the design of the layout of the Proposed Development WTG array to ensure the trial location is correctly sited within an overarching optimised project design, and the procurement of the installation vessel(s), pile driving hammer and full mitigation equipment on a short-term basis. The planning, procurement and preparation for the trial is estimated to require a period of 2-3 years, with additional time incurred following the execution of the trial to provide for inclusion of the trial results into the subsequent installation strategy. All of these factors are prohibitive in terms of project timeline, availability of equipment and vessels for short-term procurement, and costs, which the Applicant has calculated as being in excess of £30 Million (direct costs of the fabrication of a single monopile, reservation of an installation vessel, mobilization of the vessel, vessel day rate, equipment hire (installation hammer, noise mitigation system and support vessels)). Even leaving aside the site investigation works, the procurement of equipment and vessels would be estimated to require at least two years to complete, even if equipment could be made available for short-term charter, which is very unlikely given the scarcity of such in the market currently. The subsequent delay to the project, which notably affects its ability to enter into the financial investment decision and Contracts for Difference (CfD) Allocation Round auction process, notwithstanding any additional consents required to undertake the installation of a trial foundation pile if it is separate to the construction phase consented under the DCO for Rampion 2, makes the trialling of the installation mitigation unfeasible. The effectiveness of the noise mitigation techniques will be confirmed through comparison with the unmitigated modelling results. Measurements of underwater noise during the construction phase will be compared with the computer modelling of unmitigated piling noise, in which there

is confidence as modelling is based primarily on empirical data from unmitigated piling measurements.

- 5.8.26 Noise mitigation is an area that is rapidly evolving, and the Applicant has undertaken recent discussions with a contractor providing DBBC that identified current deployments of DBBC for offshore wind piled foundations at water depths of 60m deep where the contractor did not expect significant issues with the performance of the DBBC. It is notable that this project was in a jurisdiction that has a legal noise threshold in place, and therefore achieving the appropriate level of noise reduction is an imperative. The Applicant acknowledges that this is related to an ongoing project and at the present time monitoring information on deployed DBBC efficacy at 60m is not yet available. The Applicant further notes that as set out in Table 2-16, row FS2.10 of the Applicant's Responses to Examining Authority's Second Written Questions (ExQ2) **[REP5-119]** that it will further optimise the technical solutions with respect to layout and the equipment required to deliver an effective DBBC at greater depths.

*Proposed underwater noise monitoring and adaptive management*

- 5.8.27 Natural England and the MMO consider that underwater noise monitoring data should be collected to understand how noise propagates over distance from the source in the specific environmental conditions at the Rampion 2 site. Natural England and the MMO recommend that given the complex and variable environmental conditions at the site and their uncertainties of the efficacy of NAS in the conditions, that the first eight piles (or eight of the first 12 piles), of each foundation type are monitored across a representative range of conditions.
- 5.8.28 The Applicant has provided an updated Offshore In Principle Monitoring Plan **[REP5-084]** at Deadline 6 which details the proposed monitoring commitments. This includes the commitment to monitor four of the first 12 piles of each foundation type in the black bream breeding season (1 March to 31<sup>st</sup> July), and monitoring of four of the first 12 piles of each foundation type outside of the black bream breeding season. The noise monitoring will include measurement locations in the near and far field; although the specific designs of the survey will depend on the exact locations of piles to be installed while monitoring takes place, it is expected that monitoring stations will be situated at 750 m, 5000 m, and others, including a location representative of the Kingmere MCZ. This will enable the Applicant to validate its noise modelling and to optimise the deployment of the noise abatement systems for the remaining installation campaign. The Applicant will provide the monitoring data within two weeks for each pile foundation and the final monitoring report within four weeks in accordance with the request from Natural England and the MMO.
- 5.8.29 The proposed monitoring will be undertaken 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. Monitoring during this period, provide for both single (DBBC, offering a noise reduction of 15dB) and combined measures (DBBC and another noise abatement measure, offering a noise reduction of up to 20dB).
- 5.8.30 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 that will 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 **[REP5-082]** 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.

- 5.8.31 The Proposed Development therefore accords with the requirements regarding monitoring and adaptive management in revised NPS EN-1 (DESNZ, 2023a) paragraph 4.2.12 and revised NPS EN-3 (DESNZ, 2023) paragraphs 2.8.222–223.

#### Marine mammals

- 5.8.32 The Applicant submitted its Working In Proximity to Marine Wildlife protocol **[REP1-028]** which will form part of its Vessel Management Plan which the Applicant has committed to in condition 11(1)(f) of the DMLs at schedules 11 and 12 of the Draft Development Consent Order **[REP5-005]** (updated at Deadline 6) and which will be incorporated into the contracts for the principal contractor(s) of all offshore works authorised by the DCO. The objective of the Working in Proximity to Wildlife protocol **[REP1-028]** is to minimise the risk of collision, injury and disturbance to marine wildlife. This is achieved by detailing vessel operation guidelines, good practice measures and collision avoidance code of conduct. This document was submitted into the examination in lieu of an Outline Vessel Management Plan.
- 5.8.33 The Working In Proximity to Marine Wildlife protocol **[REP1-028]** sets out that a Construction Method Statement (as required under dML Condition 11(c) in Schedules 11 and 12 of the Draft Development Consent Order **[REP5-005]**(updated at Deadline 6)) will be produced prior to construction which will include details of the procedures for soft start and ramp up of piling activity, in accordance with those assessed in Chapter 11: Marine Mammals, Volume 2 **[REP5-031]** (updated at Deadline 6).
- 5.8.34 In the marine environment, operators of vessels are to be informed about the potential threat their vessels may pose to marine wildlife and guidance on collision awareness and avoidance protocols is to be communicated to vessel crews during mobilisation briefings. Compliance with activity-specific Risk Assessment Method Statement (RAMS) will be specified in the contracts for the principal contractor(s), with strict adherence to any specified requirements for vessel movements. Embedded mitigation to minimise the risk of vessel collisions with marine mammals include utilising existing vessel routes, where possible. A comprehensive code of conduct for vessel operators will be developed, taking into account the measures set out in guidance and a code of conduct for good practice will be formulated before construction, incorporating the latest information and guidance. This will be based on the Working In Proximity to Marine Wildlife protocol **[REP1-028]** which will form part of the Vessel Management Plan.
- 5.8.35 In compliance with dML Condition 11(l)&(m) of Schedules 11 and 12 of the Draft Development Consent Order **[REP5-005]** (updated at Deadline 6), a Piling Marine Mammal Mitigation Protocol and a UXO Clearance Marine Mammal Mitigation Protocol will delineate proposed mitigation measures aimed at minimising the risk of any physical or permanent auditory injury to marine mammals during piling and UXO clearance operations (noting that UXO clearance itself is not authorised via the dMLs) . These comprehensive plans will encompass embedded mitigations, including details of soft-start procedures and control measures for UXO clearance.

- 5.8.36 The Draft Piling Marine Mammal Mitigation Protocol (MMMP) **[REP4-051]** (updated at Deadline 6) and Draft Unexploded Ordnance Clearance Marine Mammal Mitigation Protocol **[REP5-078]** have been submitted into the Examination. The clearance of UXO will be controlled through a separate Marine Licence once surveys confirm the extent of the items requiring removal.
- 5.8.37 The detailed design of the Proposed Development will specify the foundation type and installation method and the potential for disturbance to marine mammals will be determined. This will inform the need for further mitigation measures to minimise sound propagation and disturbance. If required, a comprehensive review will be undertaken to determine the most suitable and effective methods (including noise abatement measures) based on the latest available practices before construction commences.
- 5.8.38 As confirmed by the Applicant at ISH1 and as set out in the Applicant's Post Hearing Submission – Issue Specific Hearing 1 **[REP1-033]**, the marine mammal baseline (Appendix 11.1 Marine mammal baseline technical report **[APP-147]**) was drafted in 2021 and therefore was outdated at the time of the Application being submitted for the Proposed Development. At the time of writing the baseline, the Proposed Development was located within the Offshore Channel and South West England Management Unit but due to subsequent boundary changes, the Proposed Development is now located partly within both the new boundary of the Coastal West Channel Management Unit and the Offshore Channel and South West England Management Unit. Subsequently, the Applicant updated the marine mammal baseline relevant to bottlenose dolphin at Deadline 2 to reflect changes arising from Management Unit boundary changes (Applicant's Response to Action Points Arising from ISH 1: Marine Mammals **[REP2-019]**). The Applicant provided additional iPCoD (interim Population Consequences of Disturbance) modelling at Deadline 5 **[REP5-128]** (updated at Deadline 6 to Appendix 11.4 Bottlenose dolphin population modelling (Document reference 6.4.11.4)) to justify the conclusion of low magnitude on the Coastal West Channel Management Unit population with respect to disturbance caused by pile driving. As a result, this confirmed that the proposed post-consent monitoring of bottlenose dolphins to test the conclusion of not significant in EIA terms (Applicant's Response to Action Points Arising from ISH 1: Marine Mammals **[REP3-081]**) is not required.
- 5.8.39 As confirmed by the Applicant at ISH 1 and as set out in the Applicant's Post Hearing Submission – Issue Specific Hearing 1 **[REP1-033]**, there was an error in the harbour porpoise Cumulative Effect Assessment (CEA) in Chapter 11: Marine mammals, Volume 2 of the Environmental Statement **[APP-052]**. The Applicant provided an update to the CEA in Chapter 11: Marine mammals, Volume 2 **[REP1-004]** subsequently updated at Deadline 5 **[REP5-031]** and updated at Deadline 6. The Applicant provided a response as to why the larger number of harbour porpoise impacted in the CEA would not have an effect on the harbour porpoise population (Applicant's Responses to Examining Authority's First Written Questions **[REP3-051]** (updated at Deadline 5 **[REP5-109]**) and Applicant's Response to Deadline 2 Submissions **[REP3-052]**). Natural England stated there was no change in their position and cited their response **[PD-011]**, as a result the Applicant provided an update to the CEA in Chapter 11: Marine mammals **[REP4-020]** subsequently updated at Deadline 5 **[REP5-031]** and updated at Deadline 6. Natural England provided more information on their position that they do not agree with the Applicant's rationale regarding the approach to CEA **[REP4-097]** and the Applicant has provided an additional response (Applicant's Responses to Examining Authority's Second Written Questions **[REP5-119]**) and updated the CEA in Chapter 11: Marine mammals **[REP5-033]** at Deadline 6.



- 5.8.40 The Applicant has committed to Double Big Bubble Curtains (DBBC) (C-265) throughout the piling campaign. This will reduce the injury (Permanent threshold shift) and disturbance impact ranges from those presented in Chapter 11 of the Environmental Statement (resubmitted at Deadline 6). The Applicant will undertake noise monitoring of the measured data of four of the first 12 piled foundations of each foundation type to be installed (outside of the black seabream spawning season 1st August to 28th February) and compare the measured data with the predictions for received levels that were made in the Environmental Statement (Offshore In Principle Monitoring Plan **[REP5-084]** (updated at Deadline 6)). Additionally, should permission to undertake foundation installation using percussive piling within the black seabream spawning season (1<sup>st</sup> March to 31<sup>st</sup> July (or part thereof)) be granted, additional noise monitoring will also be undertaken at four of the first 12 foundations of each piled foundation type installed using percussive piling. This data will also be useful to further validate the predictions of the received levels that were made in the Environmental Statement (Offshore In Principle Monitoring Plan **[REP5-084]** (updated at Deadline 6)). As DBBC (C-265) will be used throughout the piling campaign, and a further noise abatement system will be in place during the black bream breeding season (March-July), the noise monitoring data will also be used to validate the performance of the noise abatement systems in terms of their effectiveness (Offshore In Principle Monitoring Plan **[REP5-084]** (updated at Deadline 6)).
- 5.8.41 As set out in the response **[REP1-017]** to Natural England's relevant representation **[RR-265]** and the MMO's relevant representation **[RR-219]**, the Applicant has clarified the sensitivity definition used in Chapter 11: Marine mammals, Volume 2 **[APP-052]** (updated to **[REP5-031]** and updated at Deadline 6) and maintained that sensitivity of cetaceans to a Permanent Threshold Shift in hearing is low. The Applicant has provided additional responses, Applicant's Response to Deadline 2 Submissions **[REP3-052]** and Applicant's Response to Stakeholder's Replies to examining Authority Written Questions **[REP4-079]**. The Applicant agrees with the MMO that more empirical data is required but based on expert opinion, the Applicant maintains that the sensitivity score for cetaceans is low. This matter will not be resolved within the timescale of the examination as more data and further studies are required. This is stated as 'Not agreed – No material impact' within the Statement of Common Ground Natural England **[REP5-097]** and Statement of Common Ground MMO **[REP5-100]**.
- 5.8.42 The Applicant provided a response **[REP1-017]** to Natural England's relevant representation **[RR-265]** regarding the terminology around soft start procedures and that what has been modelled is the worst-case. The Applicant submitted an updated Draft Marine Mammal Mitigation protocol **[REP4-051]** at Deadline 4 detailing the soft-start procedures. Natural England advised they still had concerns around the terminology for soft start **[REP5-138]**. The Applicant has submitted an additional update to the Draft Marine Mammal Mitigation protocol **[REP4-051]** at Deadline 6 with the terminology that reflects the JNCC (2010) guidelines. The Applicant considers that the duration of the soft start included in the noise modelling is correct and that the JNCC (2010) guidance has been followed in the modelling. The Applicant considers that Natural England only disagreed with the definition of soft start provided within the Draft Marine Mammal Mitigation protocol **[REP4-051]** and that with the submission of the Draft Marine Mammal Mitigation protocol at Deadline 6 this matter is resolved
- 5.8.43 The Applicant has undertaken an assessment of the effects on marine mammals in accordance with paragraphs 2.6.92-93 of NPS EN-3 (DECC, 2011b) and paragraphs 2.8.131-135 of revised NPS EN-3 (DESNZ, 2023). The Applicant has identified a range of monitoring and mitigation measures through discussions with

relevant stakeholders in accordance with 2.6.97-99 of NPS EN-3 (DECC, 2011b) and paragraphs 2.8.237-239 of revised NPS EN-3 (DESNZ, 2023). The Proposed Development accords with the policy requirements of NPS EN-3 (DECC, 2011b) and revised NPS EN-3 (DESNZ, 2023). The Proposed Development also complies with the policy requirements of Section 5.3 of NPS EN-1 (DECC, 2011a) and Section 5.4 of NPS EN-1 (DESNZ, 2023) related to biodiversity conservation with respect to consideration of impacts on marine mammals.

## *Ornithology*

### *Great black-backed gull*

- 5.8.44 Within the original Chapter 12: Offshore and intertidal ornithology, Volume 2 of the Environmental Statement **[APP-053]** (updated at Deadline 6), the Applicant undertook the assessment of potential collision risk to great black-backed gull in accordance with Natural England's recommended guidance (Natural England, 2023) with respect to collision risk modelling. At the EIA level, potential significant adverse effects within the cumulative assessment for collision were raised by Natural England **[RR-265]**, though the Applicant considers the Rampion 2 contribution to such effects is minor at most. Within Natural England's Relevant Representations **[RR-265]**, the request was made to consider if any potential mitigation could be implemented to reduce the level of effect predicted from the project, due to concerns regarding the level of impact predicted cumulatively with other plans and projects.
- 5.8.45 At Deadline 1, the Applicant provided a great black-backed gull assessment sensitivity report **[REP1-038]**, in response to Natural England's comments in relation to great black-backed gull cumulative impacts and mitigation requirements. Mitigation measures to deter great black-backed gulls from roosting on platforms at the extant Rampion 1 wind farm were proposed based on observed behaviours, however the effectiveness of such measures is unknown. Additionally, the Applicant provided a range of collision risk modelling scenarios that provided a comparison of approaches, to convey the potential range of impact posed by the Proposed Development in contrast to only relying on Natural England's precautionary approach. Parameters recommended by Natural England potentially include high levels of precaution and so by using all of Natural England's recommended parameters, multiple layers of precaution are incorporated into the collision risk modelling providing significant uncertainty to the realism of the level of effect. This is corroborated by the original developer of the Band (2012) collision risk model, whereby they 'do not recommend worse case assumptions at each stage as this provides overly pessimistic results'. The developer suggests the use of 'best-estimate' values when conducting collision risk modelling. The results of the collision risk model assessments provided in the great black-backed gull sensitivity report **[REP1-038]** concluded that potential impacts could be up to 86.4% lower per annum in contrast to impacts predicted following Natural England's recommended approach. Providing the different scenarios of collision risk modelling highlights the substantial differences in potential outcomes of the model. The Applicant concluded within the sensitivity report that Natural England's approach is highly precautionary, whilst providing sufficient justification around the evidence-based scenarios used to inform a more realistic collision risk impact for great black-backed gulls.
- 5.8.46 The Applicant consulted with Natural England with respect to the mitigation measures proposed within the sensitivity report **[REP1-038]** during a consultation meeting held on 17<sup>th</sup> April 2024. In relation to great black-backed gull mitigation, both parties agreed the only known effective mitigation measure would be raising of the minimum blade tip height. However, as set out at ISH1 and in

the Applicant's Post Hearing Submission – Issue Specific Hearing 1 **[REP1-033]**, as the height of the turbines is increased (which would reduce ornithological collision risk), other impacts are made worse, for example the effect on landscape and visual. As such, there needs to be a balance of impact across receptors. Natural England acknowledged that increasing the air gap would not be feasible for Rampion 2 due to the increased negative effect such mitigation would have on other receptors (SLVIA). Such acknowledgement is captured within their Deadline 3 submission **[REP3-080]**.

- 5.8.47 Within Appendix B3 of the Natural England Deadline 3 Submission **[REP3-080]**, comments concerning the Biologically Defined Minimum Population Scales (BDMPS) population to be used in great black-backed gull assessments, as well as data gaps within the cumulative assessment, were raised. In response to these comments, the Applicant conducted revised alone and cumulative assessments using the BDMPS population recommended by Natural England. In addition, cumulative assessments incorporating the previously data deficient projects were provided. The results of such updated assessments are presented in the Appendix 12.6 Great Black-backed Gull Cumulative Assessment and PVA (Document reference 6.4.12.7) submitted at Deadline 6. The Applicant concluded following the updated assessments that the effects of collision on great black-backed gull for the Proposed Development alone and cumulatively with other plans and projects would not lead to a significant adverse impact.
- 5.8.48 At Deadline 5, the Examining Authority suggested the Applicant explore the possibility of potential compensation for great black-backed gull in case the Secretary of State is minded to accept the advice of Natural England regarding the cumulative effects on the great black-backed gull. As detailed within the Applicant's response to ExA's Request for Further Information (Document reference 8.99) there is no potential for effective and reasonable compensation to be provided by the Applicant for great black-backed gull without leading to potential negative effects on other seabirds or resulting in further human conflict.

#### Auk In-combination assessments

- 5.8.49 Within the Applicant's original Report to Inform Appropriate Assessment **[REP5-025]** (updated at Deadline 6), assessment of the guillemot feature of the FFC SPA and Farne Islands SPA, and razorbill feature of the FFC SPA was undertaken for the Proposed Development alone only. This was due to the level of effect predicted alone resulting in only a single additional breeding adult mortality per annum, for which the Applicant concluded such an effect as being an intangible contribution to any in-combination effect.
- 5.8.50 Within Natural England's Relevant Representations **[RR-265]**, the request was made by Natural England for the project to assess the auk qualifying features of the FFC SPA and Farne Islands SPA in-combination with other plans and projects. This was due to Natural England disagreeing the level of effect predicted was an intangible contribution.
- 5.8.51 In accordance with Natural England's request, in-combination assessments were undertaken for the auk qualifying features of the FFC SPA and Farne Islands SPA as presented within the Applicant's Post Hearing Submission – Issue Specific Hearing 1 Appendix 8 – Further Information for Action Point 34 – In Combination Assessment Update for Guillemot and Razorbill (to be included as Appendix 12.6 Great Black-backed Gull cumulative assessment and PVA, Volume 4 of the ES (Document reference 6.4.12.7)). The conclusions of such assessments were that the potential for an AEoI for the project in-combination could be confidently ruled out for the auk qualifying features of the FFC SPA and Farne Islands SPA.

5.8.52 On review of these in-combination assessments Natural England summarised their position with respect to the potential for an AEoI within their Deadline 5 response **[REPS-137]**. Natural England's position is as follows:

- Guillemot feature of the Flamborough and Filey Coast SPA – AEoI cannot be ruled out for Rampion 2 plus all consented projects; Rampion 2 plus all other projects; and Rampion 2 plus all other projects (excluding Hornsea Four). AEoI can be ruled out for Rampion 2 plus all consented projects (excluding Hornsea Four).
- Razorbill feature of the Flamborough and Filey Coast SPA – AEoI cannot be ruled out for Rampion 2 plus all consented projects; and Rampion 2 plus all other projects.
- Guillemot feature of the Farne Islands SPA – AEoI cannot be ruled out for Rampion 2 plus all other projects. AEoI can be ruled out for Rampion 2 plus all consented projects.

5.8.53 Accordingly, the Applicant proceeded to undertake a Habitats Regulations Assessment (Without Prejudice) Derogation Case **[REP4-014]** (updated at Deadline 6) for the auk qualifying features of the FFC SPA and Farne Islands SPA. A summary of the HRA without prejudice Derogation Case (including proposed compensation measures), relevant consultation with Natural England and issues raised during examination can be found in the 'The Habitat Regulation Assessment (HRA) derogation case (without prejudice) on the Flamborough and Filey Coast Special Protection Area (SPA) and the Farne Islands SPA, including in-combination impacts' section. Due to the low level of impact. Natural England have acknowledged the low level of impact from the Proposed Development and are broadly supportive of the compensation measures proposed.

5.8.54 Notwithstanding the Applicant's position that AEoI can be ruled out for auk qualifying features of the Flamborough and Filey Coast (FFC SPA) and the Farne Islands SPA, during the examination it has submitted a 'without prejudice' HRA derogation case that provides the SoS with the necessary information to support a clear and overriding case for Rampion 2 should the SoS conclude AEoI for the auk qualifying features of the Flamborough and Filey Coast (FFC SPA) and the Farne Islands SPA. Therefore, it is considered that Proposed Development accords with the NPS policy requirements set out in Section 4.3 and Section 5.3 of NPS EN-1 (DECC, 2011a), specifically paragraph 4.3.1, and the policy requirements in Section 4.2 and Section 5.4 of NPS EN-1 (DESNZ, 2023) within paragraphs 4.2.18-22 and 5.4.25-31, and Section 2.8 of NPS EN-3 (DESNZ, 2023).

*Potential effects on features of the Marine Conservation Zones (MCZs) close to the offshore Order Limits*

5.8.55 As set out in the Applicant's response to Natural England's relevant representation **[REP1-017]**, whilst seabed disturbance and associated changes in suspended sediment concentrations ("SSC") and deposition of sediment will occur, the Kingmere MCZ is not identified as a receptor (or containing receptors) that is/are directly or indirectly sensitive to the occurrence of such changes. As such, the nature and magnitude of the effect is described as a pathway (in paragraph 6.9.21 onwards, Chapter 6: Coastal processes, Volume 2 **[APP-047]** (updated at Deadline 6)). Impacts and impact assessment on other MCZ features (e.g. benthic ecology features) are signposted in the same assessment at paragraph 6.9.32, Chapter 6: Coastal processes, Volume 2 **[APP-047]** (updated at Deadline 6).

- 5.8.56 The extent and magnitude of maximum proportional reduction in significant wave height is illustrated in Figure 6.4, Chapter 6: Coastal processes – Figures, Volume 3 **[APP-079]** (updated at Deadline 6) and the location of all designated sites, including the extent of Kingmere Marine Coastal Zone (MCZ) is illustrated in Figure 6.2, Chapter 6: Coastal processes – Figures, Volume 3 **[APP-079]**. The figures indicate that a minimal reduction (2.5 to 5% reduction) in smaller (50% non-exceedance) waves might overlap with Kingmere MCZ, or areas updrift of it. Figures A6 to A20 in Appendix 6.3, Coastal processes technical report Impact assessment, Volume 4 **[REP5-044]** illustrate that for other larger wave conditions from a range of coming directions, the reduction is less than 2.5 %. As assessed in Chapter 6: Coastal processes, Volume 2 **[APP-047]** (updated at Deadline 6), in all cases, the reduction in wave height is small in relative and absolute terms, and in comparison to the normal range of natural variability. As a result, no measurable change to the environmental processes (waves or sediment transport) in the Kingmere MCZ was identified.
- 5.8.57 Impacts on black seabream as a receptor have been assessed in Chapter 8 Fish and shellfish ecology, Volume 2 **[REP5-027]** (updated at Deadline 6). 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]**. The Applicant confirms that the sensitivity to underwater noise of the receptor is the primary measure of sensitivity to the impact. 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 have been proposed in the In Principle Mitigation Plan for Sensitive Features **[REP5-082]**, this includes that no construction and installation, preparatory works during cable installation, UXO clearance, preventive or scheduled maintenance, inspections and decommissioning works will take place in the export cable corridor during to breeding season. Further details on the impact to black seabream is presented in 5.8.13 *et seq.*
- 5.8.58 As presented in the In Principle Sensitive Features Mitigation Plan **[REP5-082]**, through the implementation of noise abatement measures, and seasonal restrictions and zoning, the Applicant is confident that the conservation objectives of the Kingmere MCZ will not be hindered due to the measures of precaution. Significant measures of precaution are applied throughout the mitigation plan, including the use of a precautionary disturbance threshold of 141 dB SELs based on research by Kastelein et al. (2017) (Appendix 6) (which recorded a short-lived response to 141 dB (SELs) in seabass), and the modelling of minimal underwater noise attenuations afforded by each noise abatement measure. 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 and complies with current practice when approaching issues such as scientific data gaps and uncertainties, in order for planning decisions to be made.
- 5.8.59 The Applicant confirms that the magnitude of impact is determined after the implementation of the proposed embedded environmental mitigation (C-265, C-274, C280, C-281 all secured in Condition 11(1)(k) of the dMLs (Schedules 11 and 12 of the draft DCO **[REP5-005]** (updated at Deadline 6))) 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.

5.8.60 However, the noise abatement measures proposed by the Applicant have not been agreed with Natural England which has maintained its position that the conservation objectives of black seabream within the Kingmere MCZ could be hindered unless a piling ban is implemented during the black seabream spawning period (1<sup>st</sup> March – 31<sup>st</sup> July). Therefore the Applicant produced a Without Prejudice Stage 2 Marine Conservation Zone Assessment **[REP4-071]** (updated at Deadline 6) detailing their position that there are No Other Means of Proceeding and Clear Public Benefits of the Development and a Without Prejudice Measure of Equivalent Environmental Benefit (MEEB) Review for Kingmere MCZ **[REP4-078]** (updated at Deadline 6).

*Measures of Equivalent Environmental Benefit (MEEB)*

5.8.61 The Applicant provided a Without Prejudice Stage 2 Marine Conservation Zone Assessment **[REP4-071]** (updated at Deadline 6) detailing their position that there are No Other Means of Proceeding and Clear Public Benefits of the Development and a Without Prejudice Measure of Equivalent Environmental Benefit (MEEB) Review for Kingmere MCZ **[REP4-078]** (updated at Deadline 6). These documents have been submitted on a without prejudice basis, if the Secretary of State determines it is required during the consent determination process. These documents were initially submitted at Deadline 4, with updated documents submitted at Deadline 6 following further feedback from Stakeholders.

5.8.62 Within the MEEB Review **[REP4-078]** (updated at Deadline 6), the Applicant short-listed three options for MEEB from a longlist of options which are as follows: **A)** Removal of marine litter, including awareness and engagement, **B)** Reduction in disturbance from watercraft within the Kingmere MCZ through: voluntary seasonal speed limit and/or voluntary no anchor zone, and **C)** Monitoring and research of black seabream movements within the Kingmere MCZ and surrounding areas. Following submission at Deadline 4, the Applicant met separately with the MMO, Natural England and Sussex IFCA to discuss the MEEB options presented within the MEEB Review **[REP4-078]** (updated at Deadline 6). Following feedback from Stakeholders, the MEEB review was updated to provide further clarity over how each measure provided 'additionality' to existing management measures for the Kingmere MCZ and to address comments over the measurability of the MEEB options.

5.8.63 The Applicant can confirm that it is their position that each MEEB outlined within the MEEB Review **[REP4-078]** (updated at Deadline 6) is sufficient to provide benefit of equivalent value to the maximum extent of the Proposed Development's effect on the black seabream spawning grounds if the SoS cannot rule out that the Proposed Development would represent a significant risk of hindering the conservation objectives of the Kingmere MCZ. The final position of the Applicant is that Option **A)** Removal of marine litter, including awareness and engagement is the preferred option for MEEB. There has been a precedent set by other Offshore Windfarm Developments using marine litter/debris removal (and education and awareness) as a MEEB/Compensation measure. For example, on 16th July 2024, DESNZ issued a response to the Norfolk Projects Offshore Wind Farms Development, Benthic Implementation and Monitoring Plan (Royal Haskoning DHV, 2024) approving marine debris removal and education and awareness an appropriate compensation measure from impacts to a feature of an MPA (DESNZ, 2024). In addition, following consultation with Sussex IFCA, it was stated that marine debris such as ghost fishing gear poses negative environmental and ecological consequences within the Sussex IFCA district.

## UXO removal

- 5.8.64 The Applicant confirms that UXO removal will be sought in a separate future marine licence application when there is greater certainty on the quantum of UXO requiring clearance prior to construction using high resolution geophysical survey data. The Applicant also confirms that no UXO clearance will be undertaken within the black bream breeding period (March - July). The Applicant confirms that the implementation of Commitment 273 in the Commitments Register **[REP5-086]** (updated at Deadline 6) (as secured in Condition 11(1)(k) of the dMLs (Schedules 11 and 12 of the draft DCO **[REP5-005]** (updated at Deadline 6) (updated at Deadline 6)) which states that no works will take place in the ECC during the black bream breeding season (March – July), applies to all aspects of export cable installation (including seabed preparation works, cable protection works and UXO works).

## Underwater noise modelling

- 5.8.65 The underwater noise modelling locations used to inform the assessment of potential impacts on the features of the Beachy Head East and Beachy Head West MCZs (Draft Marine Conservation Zone assessment **[APP-040]**), and the proposed mitigation measures are as detailed in the In Principle Sensitive Features Mitigation Plan **[REP5-082]**, are based on the worst-case piling locations on the project boundary relative to sensitive features, and the bathymetry of the site. The Applicant is confident that based on these data presented in Chapter 8, Fish and Shellfish Ecology, Volume 2 **[REP5-027]** (updated at Deadline 6), seahorse numbers within the vicinity of the Proposed Development are generally low. As detailed in the In Principle Sensitive Features Mitigation Plan **[REP5-082]**, as a further precaution, the Applicant has committed to the use of at least one offshore piling noise mitigation technology (DBBC) for the duration of the construction phase, this will ensure any potential for impact on seahorse in its offshore winter phase is minimised.
- 5.8.66 The Applicant highlights the precautionary nature of the parameters built into the underwater noise modelling (Appendix 11.3: Underwater Noise Assessment Technical Report, Volume 4 **[REP5-046]**), and the modelling of noise abatement measures. Therefore, the Temporary Threshold Shift (TTS) contour as presented in relation to the Beachy Head West MCZ are considered largely precautionary. The Applicant is therefore confident that the implementation of a noise abatement system (DBBC) year-round (with the inclusion of additional mitigation measures from March-July) will ensure the conservation objectives of the Beachy Head West MCZ are not hindered.
- 5.8.67 As stated in Chapter 8: Fish and shellfish ecology, Volume 2, **[REP5-027]** (updated at Deadline 6), the Applicant does not support the application of the 135dB 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 will be acclimated to the noise and would be expected to have a correspondingly lower sensitivity to noise levels.
- 5.8.68 The Applicant has proposed mitigation where appropriate (as defined in the In Principle Mitigation Plan for Sensitive Features **[REP5-082]** and the Commitments Register **[REP5-086]** (updated at Deadline 6)). 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, **[REP5-027]** (updated at Deadline 6), sediment plumes are anticipated to be localised, and will 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.

- 5.8.69 The Applicant notes that in relation to the same effects arising from construction as assessed in Chapter 8: Fish and shellfish ecology, Volume 2 **[REP5-027]** (updated at Deadline 6), 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.
- 5.8.70 The Applicant has submitted a Draft MCZ Assessment **[APP-040]**. A stage 2 MCZ Assessment **[REP4-071]** (updated at Deadline 6) to support the position that the conservation objectives of the black seabream feature of the Kingmere MCZ will not be hindered by the Proposed Development has been submitted on a precautionary and without prejudice basis. More broadly, a range of mitigation measures to address impacts on fish and shellfish are secured. The Proposed Development therefore accords with Section 5.3 and specifically paragraphs 5.3.7, 5.3.12 and 5.3.18 of NPS EN-1 (DECC, 2011a) and Section 5.4 and specifically paragraphs 5.4.9, 5.4.35 and 5.4.51 of revised NPS EN-1 (DESNZ, 2023a) and 4.2.18 – 4.2.22 with regards to CNP infrastructure (DESNZ, 2023a). The Proposed Development also accords with NPS policy related to impacts on fish set out in Section 2.6 of NPS EN-3 (DECC, 2011b), specifically 2.6.64, 2.6.74 and Section 2.8 of revised NPS EN-3 (DESNZ, 2023), specifically paragraphs 2.8.101, 2.8.150-151, 2.8.249 and 2.8.265-275

*The potential effects of the construction of the Proposed Development on the coast, Climping Beach SSSI and sea defences*

- 5.8.71 As set out in the Applicant's response to Natural England's relevant representation **[REP1-017]**, Climping beach is currently being and will continue to be changed by coastal processes, including changes in sea level. Changes to flood defence management may also occur over the lifetime of the Proposed Development and the Applicant notes the proposals will not alter the sea defences; the cables will be installed by HDD under the defences. The land site of the landfall location has been defined with a relatively wide redline boundary to account for observed and potential future changes at Climping beach, enabling a flexible approach to the detailed design work, which will be undertaken after the grant of consent. The horizontal directional drilling (HDD) will be designed to avoid the need to access Climping Beach SSSI (other than for pedestrian access), principally by the exit pits being located seaward of MLWS. There are no plans for cofferdams to be used for the HDD exit pits and this has not been assessed within the Environmental Statement.
- 5.8.72 The Applicant provided further detail in response to Action Point 7 arising out of ISH1 **[REP1-025]** as to the conditions at the Rampion 2 landfall, and that there was no suggestion that a major change in coastline processes (affecting any fundamental assumptions or the basis of its estimates) is expected in the next 50



years. The current outline design of HDD options (including the location of transition jointing bays, the anticipated alignment profile (depth) and the offshore HDD exit pits) is based on the Applicant's existing knowledge of the environmental setting, including realistically likely scenarios of coastline erosion.

- 5.8.73 At this point, prior to consent the Applicant has not undertaken ground investigation work due to the high at-risk upfront costs and effort associated with doing so. However, the Applicant has committed to doing so prior to construction in commitment C-247 in the Commitments Register **[REP5-086]** (updated at Deadline 6) and secured within the Draft Development Consent Order **[REP5-005]** (updated at Deadline 6) Requirement 26. Detailed ground investigation will form the basis for further assessments including the production of detailed ground models and a 'Coastal Erosion and Future Beach Profile Estimation Assessment', which will identify the need for further mitigation or management measures submitted prior to the commencement of Works No 6 or 7. These work steps are required to inform a final HDD design, the profile of which will have sufficient depth to account for forecast coastal change and erosion at Climping Beach. The Outline Construction Method Statement includes provision for the final depth to be specified and commits to a minimum 5m depth (see paragraph 5.1.22).
- 5.8.74 In addition to considering coastal erosion, other factors will determine the final design of the Rampion 2 landfall HDD and as a result also the depth below surface along the crossing alignment. This includes geology and ground conditions, anthropogenic features such as utilities, drill length and cable pulling requirements, cable spacing and thermal ratings and Flood Risk Assessment as described in further detail in **[REP1-025]**.
- 5.8.75 The information gathered ahead of a design being finalised at Climping Beach will be used first to determine whether it is feasible to avoid any HDD under Climping Beach SSSI. This is through the implementation of commitment C-292 in the Commitments Register **[REP5-086]** (updated at Deadline 6) that ensures the mitigation hierarchy is implemented. Should it not be feasible to avoid drilling beneath the SSSI measures to minimise risk to the designated site will be detailed. This includes both elements of the design (e.g. the target drill depth) to minimise risk and mitigations during delivery, such as those described in the Outline Code of Construction Practice **[REP5-065]**.
- 5.8.76 Whilst it is not possible at this point for the Applicant to definitively outline a minimum depth of the alignment below the current surface level of the beach profile, it is the Applicant's expectation that the HDD conduit will be constructed to a target depth of at least 5 m below the current beach profile. The Applicant confirms that the landfall HDD will be designed to maintain sufficient depth of cable burial for the lifetime of the asset, accounting for the presently predicted magnitude of coastal change and erosion as provided for by the coastal erosion and future beach profile estimation assessment provided for by Requirement 26 of the draft DCO.
- 5.8.77 As set out in the Applicant's response to Natural England's relevant representation **[REP1-017]**, the magnitude of change potentially caused by nearshore cable protection (paragraphs 6.9.71-6.9.72 of Chapter 6: Coastal processes, Volume 2 **[APP-047]** (updated at Deadline 6)) is assessed as Low due to both the temporary (during the lifetime of the project) and localised nature of any potential effect from the realistically anticipated design of cable protection nearer to the landfall (i.e. sufficient low profile to avoid any measurable effects other than changes to seabed type in the footprint of the protection itself, and the possibility

of a small amount of very near-field scour). The protection is not expected to present any measurable blockage to currents or local sediment transport, or changes to the wave climate coming onto the adjacent beach, and therefore, no far field changes to Climping Beach SSSI or the wider coastal morphology at the landfall. An assessment of Medium magnitude of change as suggested by Natural England in their representation would imply permanent changes to key characteristics or features of the seabed or coastline in far-field areas, which are not realistically expected.

- 5.8.78 The Applicant considers that the assessed sensitivity of the Climping Beach SSSI and the wider coastal morphology at landfall is medium, as per the definitions established in paragraph 6.8.3 of Chapter 6: Coastal Processes, Volume 2 **[APP-047]** (updated at Deadline 6) and also based on the capacity to accommodate the proposed form of change (which is localised and of very small potential magnitude). The HDD profiles will be designed by the appointed landfall HDD contractor post consent once sufficient site investigation information has been obtained (to be approved as part of the onshore construction method statement pursuant to Requirement 23 of the Draft Development Consent Order **[REP5-005]** (updated at Deadline 6) and following the completion of the coastal erosion and future beach profile estimation assessment secured by Requirement 26. Though subject to what is determined to be the soil and rock profile at the landfall, the drill will typically be at least 5 m below ground/beach/seabed level with the exception of the short transition distance at the start and exit points of the drilling works. With this significant level of overburden above the HDD ducts, there is no expected need for any rock armouring in this vicinity either during construction or during operation.
- 5.8.79 Climping Beach SSSI also supports wintering birds (in particular sanderling) that may be affected by disturbance associated with the delivery of landfall works. In order to avoid this potential effect, the Applicant has committed to a scheduling of the works outside of the wintering period in any location within 150m of the Climping Beach SSSI boundary. This is detailed in commitment C-217 in the Commitments Register **[REP5-086]** (updated at Deadline 6). The length of the period during which works would be prohibited have been extended reflecting the request by Natural England in 'Natural England's Response to the Examining Authority's request for further information from Natural England arising out of Issue Specific Hearing 2 (reference Q2c-2) **[REP4 -097]**.
- 5.8.80 Potential effects on the other designated features of Climping Beach SSSI (vegetated shingle beaches, semi-fixed sand dunes and fixed sand dunes) are mitigated for through the use of horizontal directional drilling to avoid ground works within the SSSI boundary and commitment C-112 in the Commitments Register **[REP5-086]** which limits access to pedestrian only, other than for emergencies.
- 5.8.81 The Applicant has provided flexibility within the Order Limits for the land site of the landfall location at Climping Beach to account for observed and potential future changes in accordance with Section 4.2 of NPS EN-1 (DECC, 2011a), specifically paragraphs 4.2.7-8, and paragraphs 4.3.11-12 of revised NPS EN-1 (DESNZ, 2023); and NPS EN-3 (DECC, 2011a) paragraph 2.6.43 and revised NPS EN-3 (DESNZ, 2023) paragraphs 2.6.1-3. There would be no adverse effects on Climping Beach SSSI as a result of the Proposed Development and therefore it is considered to accord with the NPS policy requirements set out in Section 5.3 and specifically paragraphs 5.3.10-11 of NPS EN-1 (DECC, 2011a) and Section 5.4 and specifically paragraphs 5.4.7-8 of revised NPS EN-1 (DESNZ, 2023).

The potential effects on the Arun Valley Ramsar and Special Protection Area including the potential loss of functionally linked land and water neutrality

*Arun Valley*

5.8.82 The Applicant's position on the potential for effects on functionally linked land to result in an adverse effect on integrity of the Arun Valley SPA and Ramsar site was provided in 'The Applicant's response to deadline 2 submissions' **[REP3-052]** (reference 2.27). This position has remained constant and was summarised in the Applicant's Response to the Examining Authority's First Written Questions' **[REP3-051]** (reference HRA 1.7). The Applicant met with Natural England to discuss the position and provided mapping to demonstrate the point being made. This mapping was formally provided in Figure 1.1 of the Applicant's Comments on Report on the Implications for European Sites **[REP5-120]**. The Applicant and Natural England agreed that there would be no adverse effects on the integrity of the Arun Valley SPA and Ramsar site due to potential loss of functionally linked land (see reference NE17 of the Statement of Common Ground – Natural England **[REP5-097]**).

*Water Neutrality*

5.8.83 The Applicant's position on water neutrality is reflected in '8.81 Applicant's Response to ExA's Written Questions, to Question WE2.2 **[REP5-119]**. Agreement has been reached with Natural England as well as Horsham District Council on the subject of water neutrality. It has been agreed that Rampion 2 construction water usage can be screened out for Habitat Regulations Assessment (HRA) Appropriate Assessment purposes. This is on the basis that the indicative volumes of construction water usage will fall within available headroom (not being used by other development) within Horsham District. In terms of the operational and maintenance phase water use, neutrality will be achieved using the Sussex North Offsetting Water Scheme (SNOWS) or other options (if SNOWS is not available) as documented in Chapter 26: Water environment, Volume 2 of the Environmental Statement **[APP-067]** and the Design and Access Statement **[REP5-023]** which is secured by Requirement 8 (3) in the Draft Development Consent Order **[REP5-005]** (updated at Deadline 6). The agreements are recorded now in the Statements of Common Ground submitted within Statement of Common Ground Horsham District Council (Document Reference 8.2) **[REP5-091]** and Statement of Common Ground Natural England (Document Reference 8.8) **[REP5-097]**.

5.8.84 There are no adverse effects on Arun Valley SPA and water neutrality can be achieved at Oakendene substation through the application of DCO requirements. The Proposed Development therefore complies with the policy requirements of Section 5.3 of NPS EN-1 (DECC, 2011a) and Section 5.4 of NPS EN-1 (DESNZ, 2023) related to biodiversity conservation whilst also meeting Horsham District Council's requirements regarding achievement of nutrient neutrality in new development.

The Habitat Regulation Assessment (HRA) derogation case (without prejudice) on the Flamborough and Filey Coast Special Protection Area (SPA) and the Farne Islands SPA, including in-combination impacts

5.8.85 The Applicant undertook an assessment of potential collision risk impacts to kittiwake and displacement impacts to auk features of FFC SPA within the Report to Inform Appropriate Assessment **[REP5-025]** (updated at Deadline 6). A summary of the assessment conclusions, relevant consultation with Natural

England and issues raised during examination can be found in the 'Ornithology – Auk In-combination assessments' section of this submission.

- 5.8.86 Natural England concluded that an AEOI cannot be ruled out for Rampion 2 plus all consented projects for kittiwake, guillemot and razorbill features of FFC SPA or the guillemot feature of the Farne Islands SPA. The Applicant disagrees with these conclusions evidencing the precaution within Natural England's assessment parameters and that the predicted level of effect was an intangible contribution to the in-combination total from all consented projects. A summary of the Applicants position for kittiwake is in Applicant's Responses to Examining Authority's Second Written Questions (ExQ2) **[REP5-119]**, and for auks within the Guillemot & Razorbill Implementation and Monitoring Plan **[REP5-127]** (updated at Deadline 6). These disagreements are also summarised in the SoCG **[REP5-097]**.
- 5.8.87 Accordingly, the Applicant proceeded to undertake a without prejudice derogation case for the kittiwake and auk qualifying features of the FFC SPA and Farne Islands SPA. The proposed measures are presented in the updated Habitats Regulations Assessment (Without Prejudice) Derogation Case **[REP4-014]** (updated at Deadline 6). For all species, a contribution to the Marine Recovery Fund (MRF) could also be a feasible option when the details of the MRF are published. However, project specific compensation measures have been progressed including providing kittiwake artificial nesting spaces and introducing management measures at auk colonies to reduce recreational disturbance.
- 5.8.88 As laid out in the SoCG (NE14 & NE16) **[REP5-097]**, the Applicant reached agreement with Natural England that the proposed compensation measures for kittiwake, guillemot and razorbill are an "appropriate and proportionate measure to compensate for the small contribution of Rampion 2" (**[REP2-037]** for kittiwake and **[REP4-091]** for guillemot and razorbill).
- 5.8.89 The Applicant's position in regard to compensation requirements for kittiwake is set out in paragraph 4.1.9 and Table 4-1 of the Kittiwake Implementation and Monitoring Plan (KIMP) **[REP5-115]**. Given the certainty of the measure's success and the low level of impact, the Applicant disagrees with Natural England's position on the required compensation quantum. Both positions are summarised in Table 2.1 Applicant's Response to Examining Authority's Second Written Questions **[REP5-119]**. The Applicant considers that five additional nesting spaces at the existing Dogger Bank South Artificial Nesting tower at Gateshead would adequately compensate for the impact to the kittiwake feature of the FFC SPA.
- 5.8.90 The Guillemot & Razorbill Evidence and Roadmap Rev B **[REP5-117]** (updated at Deadline 6), provides detail on the proposed compensation measures for auks. The Applicant has taken on-board Natural England's comments within **[REP4-091]** and has subsequently carried out a monitoring programme of ten shortlisted auk colonies with potential for management measures to reduce human disturbance and boost productivity as compensation. An updated Guillemot & Razorbill Evidence and roadmap was provided summarising the findings **[REP5-117]** (updated at Deadline 6). Several, promising sites have been identified and work is ongoing to progress and secure these measures. As encouraged by the ExA, the Applicant is also actively pursuing collaborative options for delivery.
- 5.8.91 A range of potential compensation requirements have been laid out in Table 8-1 of the Guillemot & Razorbill Evidence and Roadmap **[REP5-117]** (updated at Deadline 6). Natural England are yet to provide a position on the compensation requirements based on this revision. As presented in the Deadline 6 revision of the Guillemot & Razorbill Evidence and Roadmap **[REP5-117]** (updated at Deadline 6) the Applicant considers that any requirements should be presented in

relation to the predicted impacts at 50% displacement and 1% mortality. However, the current calculation method does not consider the additional productivity gain delivered to breeding birds by the measure. The Applicant will continue to discuss the calculation methodology with NE and will update the SoS if agreement has been reached.

- 5.8.92 This position has remained constant and was confirmed by the Applicant at ISH1 and subsequently set out in the Applicant's Post Hearing Submission – Issue Specific Hearing 1 **[REP1-033]**; Schedule 17 **[PEPD-017]** has been submitted separately on a 'without prejudice' basis, and is to be inserted into the draft Development Consent Order **[REP5-005]** (updated at Deadline 6) if this is deemed necessary.
- 5.8.93 The Applicant has submitted a 'without prejudice' HRA derogation case that provides the SoS with the necessary information to support a clear and overriding case for Rampion 2 should the SoS conclude AEoI for kittiwake, guillemot or razorbill from Flamborough and Filey Coast (FFC SPA) and the Farne Islands SPA. Therefore, it is considered that Proposed Development accords with the NPS policy requirements set out in Section 4.3 and Section 5.3 of NPS EN-1 (DECC, 2011a), specifically paragraph 4.3.1, and the policy requirements in Section 4.2, Section 5.4 of NPS EN-1 (DESNZ, 2023) within paragraphs 4.2.18-22 and 5.4.25–31 and Section 2.8 of NPS EN-3 (DESNZ, 2023).

*Potential construction and operational effects on terrestrial species and habitats in the South Downs National Park, particularly at Ramsar sites, SACs, SPAs, SSSIs and local wildlife sites in the vicinity of the proposed development*

- 5.8.94 The Applicant has addressed the ecological features that occur within the South Downs National Park both in terms of its 'Special Quality 2: A rich variety of wildlife and habitats including rare and internationally important species' **[REP4-063]** and as part of an Ecological Impact Assessment detailed in Chapter 22 Terrestrial Ecology and Nature Conservation **[REP5-036]** (updated at Deadline 6).
- 5.8.95 The assessment of the potential impacts of the Proposed Development on ecological features within the South Downs National Park was based on extensive field survey data gathered between 2020 and 2023, which was based on extensive technical engagement with the South Downs National Park Authority, Natural England, West Sussex County Council and others. The level of survey effort and approach is detailed within Chapter 22 Terrestrial Ecology and Nature Conservation **[REP4-022]** and discussed in a variety of documents including the Applicant's Responses to the Examining Authority's First Written Questions (EXQ1) **[REP3-051]**, the Applicant's Post-hearing submission – Issue Specific Hearing 2 **[REP4-079]** and Appendix B of the Applicant's Comments on Deadline 3 Submissions **[REP4-070]**.
- 5.8.96 The mitigation hierarchy has been implemented during the design process, as acknowledged by Arun District Council **[REP3-067]**, Horsham District Council **[REP3-069]** and West Sussex County Council **[REP3-073]** in response to the Examining Authority's questions BD 1.2 and BD 1.5. As a result, there will be no effects on European sites (the closest in the South Downs National Park being the Arun Valley SAC, SPA and Ramsar site which is 4.8km from the draft Order Limits) or SSSIs (the closest being Amberley Mount to Sullington Hill SSSI which is adjacent to an operational access route, but at least 120m from any potential construction activity) within the South Downs National Park.
- 5.8.97 Evidence for avoidance has been demonstrated at the landscape scale through changes being implemented as a result of the formal consultation process (e.g.

re-routing the cable corridor to avoid surface works within the Warningcamp Hill to New Down Local Wildlife Site). Within and close to the draft Order Limits avoidance is demonstrated, for example, through the Outline Vegetation Retention and Removal Plan **[REP5-125]** (updated at Deadline 6) which shows habitat features that have been retained through the design process, as well as demonstrating minimisation of loss through showing the constrained extents of losses (in comparison to the standard approach of a typical 40m construction corridor described in Chapter 4 The Proposed Development **[APP-045]** (updated at Deadline 6). Mitigation is detailed in the Commitments Register **[REP5-086]** (updated at Deadline 6). Compensation is provided for through reinstatement (including on-site enhancements where agreed with landowners) and habitat creation detailed in the Outline Landscape and Ecology Management Plan **[REP5-072]** (updated at Deadline 6) and via implementation of Appendix 22.15 Biodiversity Net Gain Information **[REP5-057]** (updated at Deadline 6)). The Proposed Development has committed to delivering BNG via the Statutory Biodiversity Metric even though it is not a mandatory requirement for DCO projects at this time. This ensures the delivery of any quantified shortfall in habitat value to a position of no net loss and the provision of a biodiversity net gain of at least 10% through use of the Statutory Biodiversity Metric.

- 5.8.98 The Proposed Development will not compromise 'Special Quality 2: A rich variety of wildlife and habitats including rare and internationally important species'. Within the South Downs National Park all habitat loss will be reinstated as there is no permanent above ground infrastructure proposed. The habitats to be replaced are largely intensively managed agricultural fields, although there are a number of hedgerows, tree lines and woodlands to account for. Although there will be a short-term negative effect associated with the construction phase, over time the delivery of reinstatement, localised enhancements and habitats as biodiversity gain sites (70% of which will be secured prior to the commencement of construction) will deliver more habitat being managed positively for biodiversity within the National Park and its surroundings than currently exists. In addition, the payments secured as part of the National Park enhancement and furtherance scheme (secured through requirement 43 of the DCO) will secure compensation including for landscape and visual effects which will also provide additional hedgerow and tree planting, thereby providing additional benefits for biodiversity. The provision of biodiversity net gain and the compensation payments will further the purpose of the South Downs National Park by providing additional biodiverse habitats.
- 5.8.99 In conclusion, there will be no effects on European sites or SSSIs within the South Downs National Park as all direct effects have been avoided and indirect effects have been accounted for through mitigation measures where necessary (e.g. through management of dust and accounting for water neutrality). A single Local Wildlife Site (Sullington Hill) is crossed by the cable corridor. However, no surface works are to take place within this location as potential effects are mitigated for through the use of trenchless technology. Although there is a risk that drilling fluid breakout from the HDD could result in habitat damage within the Local Wildlife Site, this risk is considered to be very small and manageable (see the Outline Code of Construction Practice **[REP5-064]** (updated at Deadline 6)). The same considerations are also applicable to ancient woodland located at Michelgrove Park.
- 5.8.100 In the medium to long term the Proposed Development will ensure that there is a greater amount of habitat being managed positively for biodiversity than at present.
- 5.8.101 There are no direct effects on SPAs, SACs, Ramsar sites or SSSIs within the SDNP and mitigation measures have been identified to account for indirect effects. The

use of trenchless technology will avoid effects on the Sullington Hill LWS. The Proposed Development therefore complies with the NPS policy requirements related to the protection of designated sites and mitigation set out in Section 5.3 of NPS EN-1 (DECC, 2011a), specifically 5.3.7, 5.3.9, 5.3.11, 5.3.13, 5.3.16-17, 5.3.18, and within Section 5.4 of revised NPS EN-1 (DESNZ, 2023), specifically paragraphs 5.4.4-6, 5.4.8, 5.4.12, 5.4.33-35.

*The scale and significance of potential construction and operational effects of the proposal on priority habitats and species including of the effect of horizontal directional drilling/trenchless crossings on protected sites and important ecologically sensitive areas*

- 5.8.102 The delivery of a 38.8km long onshore transmission cable corridor and associated substation will result in the permanent and temporary loss of areas of priority habitats including hedgerows and small areas of woodland. Priority species including European Protected Species will also be temporarily affected by the construction activity. However, delivery of habitat reinstatement at locations of temporary losses, localised enhancements and habitats as biodiversity gain sites (70% of which will be secured prior to the commencement of construction) will deliver more habitat being managed positively for biodiversity than currently exist. In addition, the section 106 agreements with local planning authorities covering other environmental effects will also provide additional habitat creation such as hedgerow and tree planting that will also be of benefit to biodiversity. The overall outcome is that no significant effects on any of the habitats or protected species assessed are predicted (see Chapter 22 Terrestrial Ecology and Nature Conservation **[REP5-036]** (updated at Deadline 6).
- 5.8.103 Trenchless crossings are regularly used on linear projects (including offshore wind farm connections) to avoid potential effects associated with groundbreaking activity on ecologically sensitive features. Although there is some inherent risks of these crossings to surface habitats (e.g. from drilling fluid breakout) detailed design and on-site management can be used to manage these effectively (see Outline Construction Method Statement **[REP5-088]** and Outline Code of Construction Practice **[REP5-064]** (updated at Deadline 6)). The Applicant is confident in the successful delivery of trenchless crossings. This has been set out in a range of documents including the responses to both the first **[REP3-051]** and second **[REP5-119]** rounds of written questions from the Examining Authority.
- 5.8.104 The Proposed Development therefore complies with the NPS policy requirements related to the protection of habitats and species, enhancement and mitigation set out in Section 5.3 of NPS EN-1 (DECC, 2011a), specifically 5.3.16-17, 5.3.18, and within Section 5.4 of revised NPS EN-1 (DESNZ, 2023), specifically paragraphs 5.4.33-34 and 5.4.54-55.

*Adequacy of the proposed mitigation and enhancements*

- 5.8.105 The Applicant has implemented the mitigation hierarchy throughout the design process, as acknowledged by Arun District Council **[REP3-067]**, Horsham District Council **[REP3-069]** and West Sussex County Council **[REP3-073]** in response to the Examining Authority's questions BD 1.2 and BD 1.5. Many potential effects on ecological features have been avoided through design or negated due to appropriate mitigation (e.g. restricting the schedule of works to avoid disturbance of certain fauna and through the specification of trenchless crossings). Where potential effects cannot be avoided commitments have been specified to manage issues appropriately (Commitments Register **[REP5-086]** (updated at Deadline 6)). These commitments have been used on other development projects where

they have been accepted as effective including the temporary translocation of hedgerows and the use of inert materials to provide connectivity during period of temporary habitat loss within linear features such as hedgerows. These are secured in the Outline Code of Construction Practice **[REP5-064]** (updated at Deadline 6) and Outline Landscape and Ecology Management Plan **[REP5-072]** (updated at Deadline 6). West Sussex County Council agreed that the measures specified are appropriate (see Statement of Common Ground with West Sussex County Council **[REP5-094]** (updated at Deadline 6).

- 5.8.106 Enhancements are delivered through the Outline Landscape and Ecology Management Plan **[REP5-072]** (updated at Deadline 6) and the Appendix 22.15 Biodiversity Net Gain Information **[REP5-056]** (updated at Deadline 6). The mechanisms described within these documents provide information both on how residual effects on habitats will be compensated for and how biodiversity net gain will be delivered. The Outline Landscape and Ecology Management Plan **[REP5-072]** (updated at Deadline 6) describes reinstatement, the potential for this reinstatement to include localised enhancements (where landowner agreement can be reached) and habitat creation at the substation location that will provide benefits to wildlife. Appendix 22.15 Biodiversity Net Gain Information **[REP5-056]** (updated at Deadline 6) provides the information on how residual effects on habitats are compensated for and the commitment the Applicant has made to delivering biodiversity net gain (the majority of which is front loaded).
- 5.8.107 The mitigation measures within the Commitments Register **[REP5-086]** (updated at Deadline 6) and the habitat reinstatement and creation measures within the Outline Landscape and Ecology Management Plan **[REP5-072]** (updated at Deadline 6) ensure that local populations of protected species will be maintained in-situ. Delivery of additional habitats to account for residual effects and delivery of biodiversity net gain will see an overall benefit. This will be further bolstered by the compensation to be paid to relevant planning authorities pursuant to the enhancement schemes secured through requirements 41, 42 and 43 of the draft Development Consent Order (document 3.1) as the purposes to which the compensation payments will be applied will deliver additional habitats of value for biodiversity.
- 5.8.108 Statements of Common Ground with Arun District Council **[REP5-90]** (updated at Deadline 6), Horsham District Council **[REP5-91]** (updated at Deadline 6) and West Sussex County Council **[REP5-94]** (updated at Deadline 6) all agree that the Applicant's approach to Biodiversity Net Gain is appropriate.
- 5.8.109 Further information regarding specific ecological features (trees and hedgerows) is provided in **Section 5.9** and BNG in **Section 7**.

*Impacts on migrating Atlantic salmon during construction and decommissioning from underwater noise and in-combination effects*

- 5.8.110 The Report to Inform Appropriate Assessment **[REP5-025]** (updated at Deadline 6) concluded no AEOI of the Atlantic salmon features of the River Itchen SAC from underwater noise during construction, for salmon migrating to and from the SAC. Whilst Natural England have stated they are likely to agree with the conclusion of no AEOI, Natural England do not agree that a fleeing receptor model should be used to inform the assessment of underwater noise impacts on fish. The Applicant remains consistent with their position, that a fleeing receptor approach is appropriate where mobile species are not spatially restricted by, for example, demersal breeding behaviours. Atlantic salmon spawn in rivers or streams and so would not be spatially restricted to areas in the vicinity of piling operations. Additionally, Atlantic salmon undertake extensive ocean migrations and, therefore,



are unlikely to remain stationary. Notwithstanding this, to provide reassurance to Natural England, the Applicant presented the impact range contours for a stationary receptor in Appendix J of the Report to Inform Appropriate Assessment **[REP5-025]** (updated at Deadline 6). The impact ranges presented in Appendix J, show no interaction with the River Itchen SAC.

## 5.9 Historic Environment

### The level of effect upon the settings of above-ground heritage assets particularly, but not limited to the setting of Oakendene Manor

- 5.9.1 The issue named above is as expressed by the Examining Authority in the *Rule 6 - Notification of the preliminary meeting and matters to be discussed* **[PD-006]** letter but the key issue in policy terms is the effects on the significance of the heritage asset that might arise from impacts to setting.
- 5.9.2 Appendix 25.7 of the ES **[APP-213]** identified heritage assets to be scoped into the assessment of effects arising from change to setting. Appendix 25.8 **[APP-214]** provided the baseline information for those heritage assets scoped into the assessment, together with Appendix 25.5 **[APP-211]** which provides a historic parkland assessment for Oakedene, as a heritage asset in its own right and as part of the setting for Oakendene Manor listed building. Chapter 25 of the ES **[REP4-024]** provides the assessment of effects on heritage significance of those assets.
- 5.9.3 Of those heritage assets scoped into the assessment of effects arising from change to setting, significant adverse effects were assessed for two heritage assets comprising less than substantial harm:
- Scheduled monument Prehistoric flint mine and a Martin Down style enclosure on Harrow hill, 850m south east of Lee Farm (NHLE 1015239) (construction phase only); and
  - Grade II Listed *Oakendene Manor* (operational and maintenance phase only) (NHLE 1027074).
- 5.9.4 The Applicant's position regarding the assessment of effects and resulting less than substantial harm to these heritage assets is unchanged through the Examination.
- 5.9.5 Requirement 8 of the draft Development Consent Order **[REP5-005]** (updated at Deadline 6) relates to detailed design approval for the onshore substation and so is relevant to effects on Grade II Listed *Oakendene Manor*. Requirement 8(2) requires that the detailed design must accord with the principles set out in the Design and Access Statement **[REP5-023]** and include details of the siting and layout and landscaping proposals. The details set out in the Design and Access Statement **[REP5-023]** have been used to inform the Applicant's assessment and so Applicant considers sufficient detail has been available to complete this assessment.
- 5.9.6 The Applicant's Post Hearing Submission – Issue Specific Hearing 1 **[REP1-033]** describes the approach to undertaking the assessment of Oakendene Manor, including relevant supporting evidence. The Applicant's response to Action Point 6 arising out of ISH1 **[REP1-025]** highlights the embedded environmental measures which seek to avoid, reduce and minimise the impacts associated with

the Oakendene site and are secured in the Design and Access Statement (DAS) **[REP5-023]**, which include:

- Siting the maximum footprint of the onshore substation within the area best screened by existing trees and vegetation and provision of trenchless crossings to maintain this screening and habitat where the onshore cable route enters the onshore substation site and the onward connection to the National Grid Bolney substation site;
- Siting the maximum footprint to avoid interrupting the view between Oakendene Manor house and the boating lake to the south of the site; and
- Planting of further woodland to strengthen the existing screening around the site and provision of scrub, hedgerow and parkland style planting to provide mitigation and enhancement. The Applicant has confirmed in updates to the Design and Access Statement **[REP5-023]** during Examination that the parkland planting will be subject to advance planting, in the first available planting season following the commencement of the substation works to maximise the benefits early.

5.9.7 The Applicant's conclusion regarding Oakendene Manor is corroborated by the Relevant Representation made by Horsham District Council **[RR-148]**.

5.9.8 In response to the request for further information made by WSCC at ISH1, additional viewpoint photography was undertaken and submitted at deadline 4 **[REP-041]**. This included a photography from a viewpoint already identified by the Applicant, but which access was not previously granted, and an additional viewpoint at the request of WSCC. Consideration of this additional viewpoint photography was given in the assessment of Oakendene Manor, and Chapter 25 of the ES **[REP4-024]** was updated accordingly at deadline 4.

5.9.9 Following submission of the additional evidence, WSCC's position was to agree **[REP5-134]** with the Applicant's assessment outcome of Oakendene Manor provided in Chapter 25 of the ES **[REP4-024]** that there would be less than substantial harm to this asset.

5.9.10 For all other heritage assets scoped into the assessment of effects arising through change to setting, the outcomes were either no effect, minor adverse not significant effect or moderate adverse not significant effect, with supporting narrative provided in Appendix 25.8 **[APP-214]** and Chapter 25 of the ES **[REP4-024]**. Where effects have been identified, these result in less than substantial harm. The Applicant's Responses to Relevant Representations **[REP1-017]**, Arun DC Deadline 1 Submissions **[REP2-021]**, Brighton and Hove City Council Deadline 1 Submissions **[REP2-025]** and the ExA's questions **[REP4-079]** address comments made by those stakeholders regarding the effects on heritage assets along the coastline arising from offshore development. The Applicant has made no subsequent change to the outcome of the assessment of heritage assets.

#### *Construction*

The level of effect to the Scheduled Monument and Martin Down style enclosure at Harrow Hill and previously unrecorded archaeology of potentially national significance

#### *Construction*

- 5.9.11 The assessment of effects on the historic environment in Chapter 25 [REP4-024], specifically archaeological remains, was supported by an archaeological desk study [APP-200 and APP-201], a geoarchaeological and palaeoenvironmental assessment [APP-202], geophysical survey [PEDP-031, PEDP-113 to PEDP-119] and targeted trial trenching [APP-212]. The assessment identified a potential for significant effects on as yet unknown archaeological remains of high heritage significance within areas of the DCO Limits where it crosses the South Downs. Where these remains, if present, relate to the Scheduled monument *Prehistoric flint mine and a Martin Down style enclosure on Harrow hill, 850m south east of Lee Farm* (NHLE 1015239), then there is potential for significant adverse effects on this monument, through change to setting.
- 5.9.12 The Applicant's commitment to mitigation of effects on archaeological remains of national significance is set out in embedded environmental measure C-225, which provides for the preservation by avoidance through design of archaeological remains of national significance. C-225 is secured in the Outline Onshore Written Scheme of Investigation [REP5-070], which sets out the measures for further archaeological evaluation and subsequent mitigation, details of which are to be set out in site-specific WSIs. The wording of C-225 was revised during the Examination following engagement with WSCC, and the wording subsequently agreed with WSCC at deadline 5 [RED5-134]. On agreeing the wording of C-225, WSCC acknowledged (in their Deadline 5 submission) that providing the updated wording was reflected in relevant control documents, they "*will be satisfied that risk of harm to nationally significant archaeology will have been significantly reduced by the commitment to preservation in situ.*" [REP5-134], and WSCC have agreed that requirement 19 in the draft DCO [REP5-005] (updated at Deadline 6) is sufficient to secure that commitment. The Outline Onshore Written Scheme of Investigation has also been reviewed and endorsed by Historic England, as stated in their Statement of Common Ground provided at Deadline 6.
- 5.9.13 The Applicant has addressed matters arising during the Examination relating to vibration and other construction and use effects on Iron Age and Roman-British remains associated with Muntham Court scheduled site (NHLE 1005850) (Applicant's response to ISH2 Action Point 51 [REP4-074] and to WSCC's Deadline 5 submission references 2.1.44 to 2.1.47 (to be submitted at Deadline 6). In conclusion of this matter, the Applicant confirms that vibration impacts on the scheduled monument are not predicted to arise and refers to the assessment of effects for this asset in Chapter 25 of the ES [REP4-024] which identifies a minor adverse effect during the construction phase, resulting in not significant effects, in EIA terms. Construction impacts to potential archaeological remains within the footprint of access A-38 are considered within Chapter 25 of the ES [REP4-024]. The relevant commitments (C-225 and C-79) provide for appropriate evaluation and mitigation of impacts to archaeological remains, which are secured in the Onshore Written Scheme of Investigation [REP5-070].
- 5.9.14 The Applicant has addressed matters raised by Interested Parties during the Examination relating to timing of archaeological trial trenching and assessment of heritage significance. Specifically, in response to ISH2 Action Point 59 the Applicant rebutted the suggestion that proposals to undertake further trial trenching post-consent/pre-construction aligned with the circumstances in the *Low Carbon Solar Park 6* case [REP4-074]. The Applicant provided a technical note which set out the approach to archaeological matters for Rampion 2 and discussed the case of the solar farm which can be clearly distinguished from the Rampion 2 project because in *Low Carbon Solar Park 6*, no assessment of the significance of the assets had been undertaken. On the other hand, the Rampion 2 assessment clearly notes the potential for unknown assets of national significance to be found and makes an assessment on that basis. Furthermore,

following discussions with stakeholders the Applicant agreed to undertake targeted intrusive survey at specific locations to clarify archaeological potential where evidence indicated that remains of national significance may be present. For example, archaeological trial trenching undertaken by the Applicant to clarify the significance of a complex of geophysical anomalies at Brook Barn Farm, confirmed that the remains are not of high heritage significance [APP-212]. The *Low Carbon Solar Park 6* case technical note [REP4-074] concluded, “The Applicant has conducted an extensive, proportionate, assessment given the nature of the scheme and its design flexibility. The Applicant has followed, and in places gone beyond, accepted practice on comparable DCO-consented schemes. There is sufficient information in the form of a robust assessment of heritage significance and significance of effect (as set out in Chapter 25: Historic environment, Volume 2 of the ES [PEPD-020]) and sufficient mitigation in place, to support a planning decision.” Historic England considers that the Outline Onshore Written Scheme of Investigation secures sufficient archaeological investigations pre-construction, as stated in their Statement of Common Ground provided at Deadline 6.

- 5.9.15 The identified degree of change to the setting of Scheduled monument Prehistoric flint mine and a Martin Down style enclosure on Harrow hill, 850m south east of Lee Farm (NHLE 1015239) (construction phase only) and Grade II Listed Oakendene Manor would constitute less than substantial harm in terms of NPS EN-1 (DECC, 2011a) paragraph 5.8.14-15 and revised NPS EN-1 (DESNZ, 2023) paragraphs 5.9.27–33. Any other non-significant effects on designated assets also constitute less than substantial harm. Section 4.7 of the Planning Statement [APP-036] (updated for Deadline 6) and Section 5, which weighs up the planning balance, outlines the demonstrable public benefits of the Proposed Development. It is considered that the substantial public benefits of the Proposed Development outweigh any residual harm to the heritage assets outlined in the ES. In line with the requirements of NPS EN-1 paragraph 5.8.20 (DECC, 2011a) (5.9.17 of revised NPS EN-1 (2023a)), archaeology at risk of loss or disturbance would be recorded before any loss occurs. The Proposed Development therefore accords with NPS EN-1 (DECC, 2011a) and revised NPS EN-1 (DESNZ, 2023).

## 5.10 Landscape, Visual and Seascape Effects

*The level of effect upon landscape character and visual amenity caused by the construction of the cable route and substation, particularly upon but not limited to those associated with:*

*The new onshore Substation at Oakendene*

- 5.10.1 The choice of the onshore Substation at Oakendene has been discussed previously (5.1.24 – 5.1.30) but there were also a number of site-specific landscape related reasons that lead to this choice as set out in Applicant's Post Hearing Submission – Issue Specific Hearing 1 Appendix 2 - Further information for Action Point 4 – Wineham Lane North [REP1-021]. These included the natural screening provided along the site perimeter and surrounding area that included mature trees and vegetation as well as landform to the south. The vast majority of this will be maintained by trenchless crossings where the onshore cable route enters the onshore substation site and the onward connection to the existing National Grid Bolney substation. This natural or existing screening also separates Oakendene Manor and its associated parkland from the onshore Substation with the siting of the maximum footprint positioned to avoid most existing vegetation and interruption of the view between the manor house and the boating lake to the south.

- 5.10.2 The screening of the site will be further enhanced through the provision of landscape planting as secured in the Design Principles in the Design and Access Statement [**REP5-023**] and shown in the Indicative Landscape Plan alongside the Outline LEMP [**REP5-072**] (updated at Deadline 6) which further outlines the monitoring, management and maintenance requirements. The principles provide for the retention and enhancement of existing vegetation, advance planting, further mitigation planting of native trees, woodland, hedges, shrubs and grassland, including some parkland style planting to provide screening and enhance the former parkland at Oakendene Manor. Further measures include principles of an Architectural Strategy (the benefits of which are not illustrated in the photomontages). This reflects NPS EN-1 (2011) - 4.5.3 which recognises the limited choices in appearance of energy infrastructure but demonstrates that opportunities have been accounted for good design in relation to landscaping and vegetation.
- 5.10.3 These measures are secured in the design principles within the Design and Access Statement [**REP5-023**] and the Outline LEMP [**REP5-072**] (updated at Deadline 6) with which the detailed design of the onshore substation and landscaping must comply with as per requirements 8(2) and 12(3) of the draft Development Consent Order [**REP5-005**] (updated at Deadline 6).
- 5.10.4 During construction, significant landscape and visual effects will be of short duration and restricted to part of the J3 Cowfold & Shermanbury Farmlands LCA (<300m) and landscape elements within the onshore Substation footprint. Visual effects are also limited to views from roads (A272 and Kent Street) along the site perimeter and part of PRoW 1786 to 1787 crossing high ground at Taintfield Wood. During the operation and maintenance phase landscape effects and views into the site and towards the onshore Substation will become increasingly limited between Years 1-5 due to the establishment and growth of mitigation planting with significant residual effects remaining at Year 10 in respect of the J3 Cowfold & Shermanbury Farmlands LCA limited views from part of PRoW 1786 to 1787 to the south.
- 5.10.5 As a result of requests from stakeholders a number of additional photomontages have been provided to illustrate the effects of the onshore Substation during the construction, operational and maintenance phases including the view from Oakendene Manor in Figure 18.14.2 and Figure 18.14.3, Volume 3 [**REP5-041**], all of which support and verify the LVIA Chapter 18: Landscape and visual impact, Volume 2 of the ES [**REP5-034**] (updated at Deadline 6).
- 5.10.6 The Applicant acknowledges that there will be residual landscape and visual effects on a temporary basis until the mitigation planting is fully established. The Applicant has agreed a compensation payment to Horsham District Council to be applied to measures within the landscape character areas affected to compensate for these effects. This is secured through requirement 41 of the draft Development Consent Order (as submitted at Deadline 6) and the associated Horsham District mitigation and enhancement principles document referred therein (also submitted at Deadline 6) The approach to securing compensation through a requirement and subsequent completion of a section 106 agreement has been agreed with Horsham District Council as set out in the joint position statement submitted to the Examination at Deadline 6 (**document reference 8.107**). It is the Applicant's position that weight can be given to the compensation secured in this manner as part of the planning balance as set out in **Section 9** below.

*Existing National Grid Bolney Substation Extension*

5.10.7 Significant effects resulting from the existing National Grid Bolney substation extension will be limited to the construction period and views from part of PRoW 1T / 36Bo. The Design and Access Statement provides the design principles for these works, principally focusing on the retention of existing vegetation surrounding the site to screen views with some additional planting adjacent to Bob Lane to the south.

*The onshore cable*

5.10.8 The onshore cable will be underground and therefore avoids any permanent effects in the first instance.

5.10.9 The construction of the onshore cable, including the associated construction compounds and site accesses will result in a number of significant landscape and visual effects as it crosses through the landscape, affecting the SDNP and its setting, other areas of landscape character, directly affecting landscape elements and the views experienced by people on mainly roads and PRoW including part of the South Downs Way and other recreational routes / open access land. There will be no significant effects on settlements or visitor / tourist attractions assessed in the LVIA. However, a significant effect on the views from Washington Recreational Ground was identified through the examination process and is assessed in Appendix 18.2: Viewpoint Analysis **[REP5-048]** and illustrated in Figure 18.31 Volume 3 **[REP4-028]**.

5.10.10 The vast majority of these effects will be short-term, this has been assessed in the LVIA as limited to the whole 3.5 year construction period. In practice the works will be phased and subject to more limited periods of activity and progressive restoration, neither of which have been accounted for in the LVIA, thereby representing a realistic worst case scenario. The details of phasing will be established in the pre-construction period once principal contractors are appointed and the detailed design of the scheme, including the programme is established.

5.10.11 During operation and maintenance, significant effects will be limited to landscape elements (trees / woodland / hedges) that have been directly affected by the construction works. All of these will be subject to restoration (planting / translocation) and management as set out in the Outline LEMP **[REP5-072]** (updated at Deadline 6) with the residual effects reducing over time to non-significant levels, albeit some areas of vegetation will change from trees / linear woodland to smaller tree species and wide hedges extending over the same localised areas and connecting into retained vegetation as illustrated in the example of Kitpease Copse, Figure 18.40, Volume 3 **[REP4-028]**.

*Landscape and Visual effects on the South Downs National Park*

5.10.12 As previously described, the Applicant has sought to design the Proposed Development sensitively to mitigate its impacts on the South Downs National Park as summarised in the Applicant's Deadline 4 submission, Further information– South Downs National Park **[REP4-063]**.

5.10.13 Drawing from this assessment it has also been concluded that two of the seven special qualities of the SDNP will be significantly affected during the construction period as follows:

- 1) "Diverse, inspirational landscapes and breathtaking views"; and
- 3) "Tranquil and unspoilt places".

5.10.14 The nature of these effects during construction will be short term in duration and temporary in nature. Taking account of the reinstatement and replacement planting there will be no significant effects on either of these special qualities during the operational and maintenance phase. The Applicant's conclusions regarding the effects on the special qualities, the statutory purposes of the SDNP and how the Applicant has sought to further the purposes is summarised in **Section 5.8**.

5.10.15 In summary, the Applicant has implemented a number of design measures to ensure the high-quality design of the new onshore substation and to minimise and manage landscape and visual impacts, including through the choice of the substation location. This accords with the overall approach required for good design and consideration of alternatives set out in Section 4.4 and 4.5 of NPS EN-1 (DECC, 2011a) and Section 4.3 and 4.7 of revised NPS EN-1 (DESNZ, 2023). The onshore cable, including within the SDNP, is underground in line with the starting presumption in revised NPS EN-5 (DESNZ, 2023c). Significant effects are largely contained within the construction phase with residual effects reducing over time in the operational and maintenance phase. The Proposed Development will not compromise the statutory purpose of the SDNP. The Proposed Development therefore accords with requirements regarding landscape and visual assessment in Section 5.9 and specifically paragraphs 5.9.5-10 and 5.9.12-13 of NPS EN-1 (DECC, 2011a) and Section 5.10 of revised NPS EN-1 (DESNZ, 2023) and specifically paragraphs 5.10.6-8, 5.10.16-17, 5.10.19-22, 5.10.24 and 5.10.32-35.

5.10.16 In acknowledgement that there will be residual significant effects on the National Park as a consequence of the Proposed Development the Applicant has agreed a compensation payment to South Downs National Park Authority to be applied to measures within the South Downs National Park both to compensate for these effects and to seek to further the statutory purposes of the National Park. This is secured through requirement 43 of the draft Development Consent Order (as submitted at Deadline 6) and the associated National Park enhancement and furtherance principles document referred therein (also submitted at Deadline 6). The approach to securing compensation through a requirement and subsequent completion of a section 106 agreement, and that the payment to be made and the purposes to which it will be applied will compensate the residual effects of the Proposed Development and seek to further the National Park purposes, has been agreed with South Downs National Park Authority. This is confirmed in the joint position statement submitted to the Examination at Deadline 6 (**document reference 8.109**). It is the Applicant's position that weight can be given to the compensation secured in this manner as part of the planning balance as set out in **Section 9** below.

#### 5.11 **The potential effect upon trees and hedgerow loss including:**

*Protected and Veteran trees; hedge notching caused by the construction of the cable route; and the adequacy of mitigation*

5.11.1 The Proposed Development has been designed to avoid losses of all trees that have Tree Preservation Orders applied, have been identified as having veteran status or lie within areas of ancient woodland. Further, stand offs between ancient woodland and veteran trees have been accounted for within the Commitments Register (see commitments C-174 and C-216) **[REP5-086]** (updated at Deadline 6) to allow for the effective management of any potential indirect effects.

5.11.2 Where possible, the draft Order Limits have been updated to ensure that the stand off distance of 25m between ancient woodland and construction works lies outside

of the boundary. The 25m buffer is greater than the minimum 15m that is recommended by the UK Government and has been defined to ensure that effective management of indirect effects from dust, site run-off and light can be delivered without any residual effects occurring.

- 5.11.3 Although trees (including those of category A status) will be lost to the Proposed Development, many more trees than will be removed will be planted and managed through measures in the Outline Landscape and Ecology Management Plan **[REP5-072]** (updated at Deadline 6), Appendix 22.16 Arboricultural Impact Assessment **[REP5-058]** and Appendix 22.15 Biodiversity Net Gain Information **[REP5-056]** (updated at Deadline 6). Further section 106 agreements with relevant local planning authorities will see further tree and hedgerow planting.
- 5.11.4 Overall, vegetation loss (including trees and hedgerows) is minimised through design, as demonstrated in the Outline Vegetation Retention and Removal Plan **[REP5-125]** (updated at Deadline 6). Minimisation of losses is to be delivered through avoidance and via approaches to working within sensitive habitats that including restricting the working width.
- 5.11.5 An example of habitat loss minimisation is secured through commitment C-115 that restricts hedgerow losses by notching them (removing short sections of hedgerow for each cable or haul road) as opposed to removing a single longer stretch. This approach was driven by comments received following the publication of the Preliminary Environmental Information Report and demonstrates the Applicant's commitment to complying with the mitigation hierarchy.
- 5.11.6 Overall, the loss of vegetation has been restricted in those habitats that are of most biodiversity value, with areas of arable fields and improved pastures being the focus of the construction works. This focus on avoiding habitats of biodiversity value is demonstrated by the overall outcome that only 650m of hedgerow with trees will be permanently lost to the Proposed Development. In the context of a 38.8km long cable route, landfall, new substation and grid connection this is highly restrictive, being equivalent to the boundary of a small field of approximately 2.5ha.
- 5.11.7 The habitats to be reinstated, enhanced or created within the draft Order Limits as described within the Outline Landscape and Ecology Management Plan **[REP5-072]** (updated at Deadline 6) are all habitats that already exist in the area. They are also habitats that are regularly created by farmers and other land managers as part of agri-environment schemes and are encouraged and supported by the relevant local authorities. Therefore, there is no reason that these habitats cannot be successfully created, established and managed in the long term as part of the Proposed Development. The key to this success is the implementation of the measures described within the Outline Code of Construction Practice **[REP5-064]** and the Outline Landscape and Ecology Management Plan **[REP5-072]**. Both of these documents have been updated regularly during the course of the examination to provide stakeholders with the surety that delivery will be appropriate to achieve the stated aims.

**The level of effect upon the seascape, landscape character and visual amenity from the construction of the offshore WTGs and substations, and night lighting particularly upon but not limited to:**

*The South Downs National Park including Sussex Heritage Coast*

- 5.11.8 The effects of the offshore elements of Rampion 2 on views from the SDNP and its special qualities, are assessed in Section 15.10 (P&M effects) of Chapter 15:



Seascape, Landscape and Visual Impact Assessment, Volume 2 of the ES **[APP-056]** (updated at Deadline 6). An additional technical note on the special qualities of the SDNP was submitted at Deadline 1; 8.25.5 Applicant's Post Hearing Submission – Issue Specific Hearing 1 Appendix 5 – Further information for Action Point 27 – South Downs National Park **[REP1-024]** and this was updated at Deadline 4 **[REP4-064]** to include further information on how the Applicant has sought to further the purposes of the SDNP with respect to each special quality.

- 5.11.9 As set out in its responses to the Examining Authority's Written Questions **[REP3-051]** and the Applicant's Responses to Stakeholder's Replies to Examining Authority Written Questions **[REP4-079]**, the SDNPA and Natural England consider that the statutory purposes of the SDNP are compromised at the point harm occurs. The Applicant considers that a significant effect on a defined special quality does not equate to compromising the statutory purposes. The Applicant has taken an approach that aligns with other NSIPs when concluding on the effect upon special qualities and whether the statutory purposes of the designation are compromised, and it has highlighted these examples to the Examining Authority **[REP3-051]**.
- 5.11.10 The Applicant's Deadline 1 Submission – 8.25.5 Applicant's Post Hearing Submission – Issue Specific Hearing 1 Appendix 5 – Further information for Action Point 27 – South Downs National Park **[REP4-064]** provides a separate clear assessment of special qualities and sets out where and how the DCO Application includes information in relation to the effects of the Proposed Development on the special qualities of SDNP.
- 5.11.11 Whilst some harm would be caused to 'stunning, panoramic views to the sea', defined in SQ1, it is the conclusion and the position of the Applicant, that this would not compromise overall integrity and purpose of the SDNP designation, as the majority of its special qualities would be unaffected, and the natural beauty of the SDNP will remain and opportunities will still be present for understanding and enjoyment of the special qualities of the SDNP. The interest in the SDP is intrinsic to itself and would not be harmed to such a degree that it would be compromised by the Proposed Development.
- 5.11.12 It is the Applicant's position that, while there is harm to SQ1 "Diverse, inspirational landscapes and breathtaking views" (during construction and operation) and SQ3 "Tranquil and unspoilt places" (during construction), the statutory purpose of the SDNP would not be compromised and reasons for its designation will not be undermined by the Proposed Development. Therefore, the Proposed Development accords with the requirements of the legal tests and the policy tests set out in the National Policy Statement (NPS) in relation to the SDNP.
- 5.11.13 The Applicant considers that some harm to a particular special quality (such as SQ1) would not compromise the reasons for the SDNP's designation, in line with other recent precedents for NSIPs. Overall, while there would undoubtedly be significant visual impact resulting from the additional Rampion 2 WTGs, the Applicant considers that this would not prevent people's ability to experience the natural and scenic beauty of the SDNP and opportunities will still be present for the understanding and enjoyment of the special qualities of the SDNP.
- 5.11.14 The Applicant considers that for the statutory purpose of the SDNP to be compromised, it would be necessary to conclude that the significant adverse effects across a number of special qualities were fundamental to the purposes for designation and affected to such a degree that the identified significant adverse effects compromised those purposes and its overall integrity. The Applicant considers that while there are significant adverse effects (as determined in EIA

terms) these do not translate into undermining the statutory purpose of the SDNP. The Applicant has aimed to avoid, compromising the purposes of designation and has had regard to sensitive design taking into account various siting, operational, and other relevant constraints. Consequently, the Proposed Development includes a range of associated mitigation as set out in the Commitments Register **[REPS-086]** (updated at Deadline 6).

- 5.11.15 The Applicant accepts that there would be some perceived diminishment (harmful effects) of one of the seven special qualities and the natural beauty of the SDNP associated with the 'panoramic views of the sea' experienced from the South Downs Way and the chalk cliffs at Seven Sisters (part of Special Quality 1), however, panoramic views of the sea would still be retained, other 'view types' would remain unaffected (such as views from the scarp looking north) and substantial areas of the SDNP have no visibility of the offshore elements of the Proposed Development and would not be affected significantly (as shown in the ZTV in Figure 15.20 in Chapter 15: Seascape, landscape and visual impact assessment – Figures (Part 4 of 8), Volume 3 of the ES **[APP-089]**). There are also 7 special qualities and it is the combination of these that define its sense of place – all but one (Special Quality 1) of the 7 special qualities (Special Quality 2 – Special Quality 7) would either be unaffected or subject to not significant effects as a result of the offshore elements of the Proposed Development.
- 5.11.16 Taking into account these factors, the effects are not considered to occur to such a degree that it would affect the integrity of the SDNP or its inherent natural beauty, changes would occur incrementally within the context of an existing offshore wind farm development (Rampion 1) located outside but in the setting of the SDNP, often beyond the intervening urban developed landscape and in the understanding of the need for an environment shaped by embracing new enterprise and increasing opportunities for producing alternative energy, as recognised in Special Quality 4.
- 5.11.17 Further, as confirmed above, the Applicant has agreed a compensation payment to South Downs National Park Authority to be applied to measures within the South Downs National Park both to compensate for these effects and to seek to further the statutory purposes of the National Park. This is secured through requirement 43 of the draft Development Consent Order (as submitted at Deadline 6) and the associated National Park enhancement and furtherance principles document referred therein (also submitted at Deadline 6). This approach has been agreed with South Downs National Park Authority as confirmed in the joint position statement submitted to the Examination at Deadline 6 (**document reference 8.109**). It is the Applicant's position that weight can be given to the compensation secured in this manner as part of the planning balance as set out in **Section 9** below.

#### *West Sussex*

- 5.11.18 The effects of the offshore elements of Rampion 2 on views from West Sussex, are assessed in Section 15.10 (P&M effects) of Chapter 15: Seascape, Landscape and Visual Impact Assessment, Volume 2 of the ES **[APP-056]** (updated at Deadline 6). West Sussex County Council agree with the concluding findings of the Applicant's assessment, that the proposed development will have significant seascape, landscape and visual effects.
- 5.11.19 Rampion 2 is supported in principle by WSCC because it would make a significant contribution to the provision of renewable energy, however it maintains concerns

about the scale of likely impacts from Rampion 2 in addition to, and in combination with the currently operating Rampion 1 Offshore Wind Farm. In response to WSCC concerns about the layout and extent of offshore wind turbines and the impacts on receptors in West Sussex, the Applicant submitted a SLVIA MDS and Visual Design Principles Clarification Note **[REP1-037]** at Deadline 1. At Issue Specific Hearing 2 (16/05/2024) the Applicant also confirmed that it recognised that further design measures in respect of the size and positioning of turbines could reduce impacts, if there were opportunity to further change those parameters. However, even if these measures were implemented, it was unlikely that visual impacts would reduce to a non-significant effect, and given economic, viability and technical constraints, the measures already put in place minimise impacts as far as the Applicant can reasonably do within these constraints. Measures to reduce impacts such as by constraining the extent of the array area, and the size and type of WTGs, will constrain the generating capacity of the Proposed Development.

5.11.20 As set out in the Applicant's response to West Sussex County Council's relevant representation **[REP1-017]**, an assessment of the effects of aviation and navigation night-time lighting is undertaken within Appendix 15.5: Assessment of aviation and navigation night-time lighting, Volume 4 of the ES **[APP-161]** and this assessment includes consideration of effects of night-time lighting on the urban areas outside the South Downs International Dark Sky Reserve (IDSR). The Applicant has provided an additional Supporting Study in Appendix 15.6: Supplementary Night-Time Viewpoint Assessment, Volume 4 of the ES **[PEPD-024]**). This provides a further assessment of the visual effects of night-time aviation and marine navigation lighting from the agreed viewpoints at Worthing (Viewpoint 10) and Pagham (Viewpoint 13) outside the IDSR, which is supported with night-time photomontage visualisations from these locations. The Applicant and WSCC agree with the night-time viewpoint assessments undertaken for viewpoint 10 (Worthing) and viewpoint 13 (Pagham) outlined in Appendix 15.6: Supplementary night-time viewpoint assessment, Volume 4 of the Environmental Statement (ES) **[PEPD-024]**.

#### *East Sussex and City of Brighton*

5.11.21 The effects of the offshore elements of Rampion 2 on views from East Sussex and the City of Brighton and Hove, are assessed in Section 15.10 (P&M effects) of Chapter 15: Seascape, Landscape and Visual Impact Assessment, Volume 2 of the ES **[APP-056]** (updated at Deadline 6).

5.11.22 Brighton and Hove City Council (BHCC) supports the principle of the Rampion 2 windfarm development, noting the contribution it will make to increasing renewable energy production for the UK and the resultant benefits for climate change, while accepting that the production of energy from offshore wind in the vicinity of the city's coastline will result in increased visual impacts, impacts on the landscape along the coast and on the seascape **[REP1-041]**. BHCC has also noted the reduction in impact on the city when compared with the scheme proposed at the PEIR stage.

5.11.23 In response to concerns that that the impact on the City of Brighton had been underassessed, the Applicant provided responses to BHCC's Deadline 1 Submissions **[REP2-025]**, confirming that in the Chapter 15: Seascape, Landscape and Visual Impact Assessment, Volume 2 of the ES **[APP-056]** (updated at Deadline 6), the sensitivity and importance of the sea views from Brighton seafront and the contribution of the seascape to the city character and sensation of space within Brighton is recognised and assessed accordingly, as being of high sensitivity and the effect major (in EIA terms) from Viewpoints 7 and 8 at the seafront, dropping to major/moderate from Viewpoint 27 set back from

the coast. The Applicant considers that these assessments do not underestimate the visual effects of the Proposed Development.

5.11.24 The need for a sensitive approach has been taken through the design changes made to the design of the Proposed Development between Preliminary Environmental Information Report (PEIR) (published by the Applicant in July 2021 in support of the first statutory consultation) and ES through the design principles described in Section 15.7 of Chapter 15: Seascape, landscape and visual impact assessment, Volume 2 of the ES **[APP-056]**. Design changes that have reduced impacts on views from the City of Brighton are described in **[REP2-025]** (reference 4.7), particularly through the reduced field of view, increased distance offshore and smaller apparent scale of the Rampion 2 WTGs (compared to the Proposed Development outlined at PEIR) as recognised by BHCC.

#### *Isle of Wight AONB*

5.11.25 Natural England continue to advise that Rampion 2 will significantly affect the statutory purposes of the Isle of Wight AONB (IoWAONB).

5.11.26 The assessment in ES Chapter 15: Seascape, Landscape and Visual Impact Assessment, Volume 2 of the ES **[APP-056]** (updated at Deadline 6) finds, as summarised in its conclusions (paragraphs 15.15.60 – 15.15.74), that Rampion 2 will not result in significant effects on views or special qualities of the IoWAONB.

5.11.27 The Isle of Wight Council agree with this finding that the effects of Rampion 2 on the perceived character and views from the Isle of Wight will be not significant (as noted in Table 15.7 in ES Chapter 15: Seascape, Landscape and Visual Impact Assessment, Volume 2 of the ES **[APP-056]** (updated at Deadline 6)).

5.11.28 There is very limited visibility of Rampion 2 from the IoWAONB as can be seen in the ZTV in ES Figure 15.20d **[APP-089]** due to the landform screening and orientation of the island. Much of the IoWAONB covers the central areas of the island or the dramatic landscapes of West Wight (Hamstead and Tennyson Heritage Coasts, which are not affected). The assessment in ES Chapter 15: Seascape, Landscape and Visual Impact Assessment, Volume 2 of the ES **[APP-056]** (updated at Deadline 6) highlights just two areas where the IoWAONB extends to the East Wight coast chalk down landscape that are more susceptible to effects on perceived character/views/qualities: Bembridge and Culver Down (near Culver Cliff); and Ventnor and Shanklin Downs further to the south (and 'the Undercliff' below it), with representative viewpoints included in the assessment at Viewpoint 34 Bembridge Down (ES Figure 15.57) and Viewpoint 35 (Chapter 15: Seascape, Landscape and Visual Impact Assessment, Volume 2 of the ES **[APP-056]** (updated at Deadline 6)).

5.11.29 The IoWAONB is recognised as being of high sensitivity to change, but the magnitude of change is assessed as medium-low and effect not significant (moderate) on the perceived character and special qualities of the closest areas of sea cliffs near Culver Cliff and sweeping beaches at Whitecliff Bay within the Bembridge and Culver Down area at the closest parts of the IoW AONB (approximately 31.4km); which reduces to low magnitude (not significant) from the wider more distant area of the IoW AONB. Effects are assessed as not significant due to distance (over 31km from closest point and over 34km from Bembridge Down), the narrow lateral spread in views (11-16°), the clear separation between these areas of downs and Rampion 2, which will be viewed clearly 'offshore' in an open and vast seascape context without interrupting the seascape off the immediate coastline of the IoW AONB. As such it has a limited characterising influence.

- 5.11.30 Although there is potential for effects to occur on aspects of four IoWAONB special qualities – the majestic sea cliffs and sweeping beaches (SQ1); the enduring presence of the downs (SQ2); and the long distance views from coastal heath and downland (SQ3); the effects of Rampion 2 on these special qualities is assessed as not significant. It is the finding of the assessment in ES Chapter 15: Seascape, Landscape and Visual Impact Assessment, Volume 2 of the ES **[APP-056]** (updated at Deadline 6) and position of the Applicant that Rampion 2 will not compromise the statutory purpose of the IoWAONB designation and the IoW Council agree with this assessment.
- 5.11.31 Further commentary was provided by the Applicant in its responses to the Examining Authority's questions **[REP3-051]** in respect of the effect of navigation and aviation lighting effects on IoWAONB Special Quality 5, which includes 'dark starlit skies'. The assessment in Chapter 15: Seascape, landscape and visual impact assessment, Volume 2 of the Environmental Statement (ES) **[APP-056]** (updated at Deadline 6) (Table 15-42) finds that the operational effects of the lighting of the offshore elements of the Proposed Development will result in a medium-low to low magnitude of change and not significant effects on the 'dark starlit skies' (part of SQ5) of the IoWAONB. The aviation lights will be visible low to the horizon at distances over 31km from the IoWAONB and do not extend high into the sky, thus limiting the amount of the night-sky that is impeded and having limited influence on the view of stars in the night-sky. Fundamentally, the views at night from the IoW AONB will remain dark and starlit (in clear atmospheric condition), regardless of the presence of the lighting of the Proposed Development
- 5.11.32 The Applicant also noted commitment C-266 (in the Commitments Register **[REP5-086]** (updated at Deadline 6)) that, during operation, and where visibility conditions permit, the intensity of aviation warning lights will be reduced to no less than 200 candela (cd), subject to the availability of a commercial system. This is secured by Condition 8 Schedule 11 and 12 of the Deemed Marine Licence in the Draft Development Consent Order **[REP5-005]** (updated at Deadline 6).

#### *Chichester Harbour AONB*

- 5.11.33 Natural England continue to advise that Rampion 2 will significantly affect the statutory purposes of the Chichester Harbour AONB (CHAONB).
- 5.11.34 With regards to the CHAONB, the assessment in Chapter 15: Seascape, landscape and visual impact assessment, Volume 2 of the ES **[APP-056]** (updated at Deadline 6) found that Rampion 2 will result in not significant effects on the character of the harbour basin area at the core of the CHAONB and the majority of its special qualities. In response to Natural England's representations **(RR-265)** and question from the Examining Authority **(PD-008)**, the Applicant provided further comment in respect of the CHAONB to support its assessment in Chapter 15: Seascape, Landscape and Visual Impact Assessment, Volume 2 of the ES **[APP-056]** (updated at Deadline 6).
- 5.11.35 There is very limited visibility of Rampion 2 from the CHAONB when surface feature screening is factored in, as seen in the Zone of Theoretical Visibility (ZTV) in Figure 15.15 of Chapter 15: Seascape, landscape and visual impact assessment – Figures (Part 1 of 8), Volume 3 of the ES **[APP-088]**. The CHAONB is very low lying and the intervening coastal plain landform, buildings and vegetation and orientation provide screening from the waters and estuaries, which are not affected. This can be seen in viewpoints within the CHAONB from which there is no effect as the Rampion 2 WTGS will not be visible, including Viewpoint B(i) Chichester Marine (Figure 15.74 of Chapter 15: Seascape, landscape and visual impact assessment – Figures (Part 8 of 8), Volume 3 of the ES **[APP-095]**) and Viewpoint B(ii) Dell

Quay (Figure 15.75 of Chapter 15: Seascape, landscape and visual impact assessment – Figures (Part 8 of 8), Volume 3 of the ES [APP-095]).

5.11.36 The assessment in Chapter 15: Seascape, landscape and visual impact assessment, Volume 2 of the ES [APP-056] (updated at Deadline 6) finds that there is a very localised significant effect on the perceived 'unique blend of land and sea' (referred to in Special Quality 1) and 'significance of.... Distant landmarks across land and water' (referred to in Special Quality 3), as experienced from a very limited area of the coastal edges/open seascape at the mouth to Chichester Harbour. Viewpoint 22 Eastoke Point (Figure 15.47 of Chapter 15: Seascape, landscape and visual impact assessment – Figures (Part 8 of 8), Volume 3 of the ES [APP-095]) provides a representative viewpoint on the coastal edge of the CHAONB from which these effects may be observed. These effects are however geographically contained to the open waters at the mouth of the harbour (Landscape Character Area (LCA) A1) and adjacent coastline at Eastoke Point and are not experienced from the wider areas of the CHAONB, including the open waters of the Chichester Harbour Central Basin (B1), where the magnitude of change is assessed as negligible and Not Significant (minor), due to the very limited theoretical visibility of the Rampion 2, the low-lying landscapes, wooded shorelines and the degree of intervening screening by vegetation and development on the Manhood Peninsula. No significant effects were assessed on all other special qualities (SQs) of the CHAONB.

5.11.37 The Applicant has undertaken an assessment of the seascape, landscape and visual effects, including effects on nationally designated landscapes, and also assessed those effects associated with night-time lighting. The Applicant considers that while there are significant adverse effects on the SDNP (as determined in EIA terms) these do not translate into undermining the statutory purpose of the SDNP. The effects are not considered to occur to such a degree that it would affect the integrity of the SDNP or its inherent natural beauty. The assessment identifies that the Proposed Development will not result in significant effects on views or special qualities of the IoWAONB and will not compromise the statutory purpose. There are very localised significant effects on two Special Qualities of CHAONB with effects geographically contained to the open waters at the mouth of the harbour. The Proposed Development therefore accords with Section 5.9 and specifically paragraphs 5.9.5-10 and 5.9.12-13 of NPS EN-1 (DECC, 2011a) and Section 5.10 and specifically paragraphs 5.10.7-8, 5.10.16-17, 5.10.20-22, 5.10.34-35 of revised NPS EN-1 (DESNZ, 2023). The Proposed Development also accords with policy related to seascape and visual effects set out in Section 2.6 of NPS EN-3 (DECC, 2011b), specifically 2.6.202-206 and Section 2.8 of revised NPS EN-3 (DESNZ, 2023), specifically paragraphs 2.8.208-212.

## 5.12 Traffic and Access

*The effects of traffic generated by the construction of the Proposed Development including but not limited to the Cowfold area*

5.12.1 In response to Action Point 8 from ISH1, the Applicant provided a note on the principal differences between the 1993 and 2023 Institute of Environmental Management's Traffic Assessment Guidance documents [REP2-017]. The 2023 IEMA guidance supersedes the 'Guidelines for the Environmental Assessment of Road Traffic' (GEART 1993), that was originally used to assess the effects in the Chapter 23: Transport, Volume 2 of the ES [APP-064] and Chapter 32: ES Addendum, Volume 2 of the ES [REP5-038] (updated at Deadline 6). The Applicant was able to confirm that no significant effects were identified as a result

of the changes made to the assessment methodology, and that the magnitude of change and the significance of residual effect on fear and intimidation reduced to negligible at Highway Links M, P and U meaning that no significant effects were identified at these Highway Links in relation to such. As a result of the changed methodology, the significant effects to pedestrian amenity identified within the Chapter 32: ES Addendum of the ES [**REP5-038**] (updated at Deadline 6) on Michelgrove Lane and Kent Street now also relate to cyclist and equestrian amenity. The Applicant's conclusions of the of technical note [**REP2-017**] were accepted by WSCC and noted by National Highways in responses the Examining Authority's first written questions ([**REP3-073**] and [**REP3-078**]).

- 5.12.2 In its response to Action Point 9 which arose at ISH1 [**REP1-025**], the Applicant confirmed that it had developed proposals for the A27 temporary construction access junction at Hammerpot (A-21 and A-22) and has shared these with National Highways as part of the ongoing engagement to reach agreement in principle on this matter. At Deadline 6, the Applicant is continuing to engage with National Highways on the proposals following completion of an independent Road Safety Audit. Whilst this will not be fully resolved prior to the end of the Examination, the Applicant is confident that a fully Design Manual for Roads and Bridges compliant design is achievable and has agreed a timetable with National Highways to resolve outstanding matters prior to a decision being made on the DCO Application, and if necessary will update the SoS accordingly. The Applicant did not submit detailed design information into the Examination for approval; this will be provided in discharge of requirement 16 of the draft Development Consent Order [**REP5-005**] (updated at Deadline 6).
- 5.12.3 In relation to access A-12, the Applicant confirmed at ISH1 and as set out in the Applicant's Post Hearing Submission – Issue Specific Hearing 1 [**REP1-033**] that the proposed access route at Brookside Caravan Park is the only viable option due to site constraints. It was also noted that the access is on the cable route and so there would be vehicles operating in this vicinity irrespective of whether the access were to be moved. It was also confirmed that the Outline Code of Construction Practice submitted at Procedural Deadline A [**PEPD-033**] had added a noise barrier in between the haul road and the caravan park, with detailed design to follow as part of the stage specific noise and vibration management plan to be submitted in accordance with Requirement 22(4)(g) of the draft Development Consent Order [**REP5-005**](updated at Deadline 6). The Applicant has built in optionality on the use of accesses 13 and 15 due to uncertainty on the timing of completion of the Lyminster bypass; the access selected would be informed by the downgrading of the A284 and the opening of the new bypass. The final detail would be provided in the stage specific construction traffic management plan to be submitted in accordance with Requirement 24 of the draft Development Consent Order [**REP5-005**](updated at Deadline 6).
- 5.12.4 In relation to access 26, the Applicant confirmed at ISH1 and in the Applicant's Post Hearing Submission – Issue Specific Hearing 1 [**REP1-033**] that Michelgrove Lane is a primarily single track lane with occasional passing places accessed via the A280 Long Furlong. It is not suitable in its current form to cater for construction vehicles and so up to eight temporary passing places will be installed to provide adequate highway width for two-way traffic. In respect of trenchless crossings, it was confirmed that has been considered in the context of construction traffic movements accordingly and that the Applicant's open cutting will be over a private access road to the east and north of the public highway so that access to the A280 will not be severed for local residents. As such trenchless crossing is not selected for this location.

- 5.12.5 In its response to Action Point 11 which arose at ISH1 [**REP1-025**], the Applicant sought to develop a traffic management strategy that considers how safe access can be achieved at access A-26, A-28 and along Michelgrove Lane. This includes consideration of traffic management measures. An update to the Outline CTMP was provided at Deadline 3 [**REP3-039**] to include a detailed traffic management strategy for use of access A-26 and A-28. It is noted that the draft Development Consent Order [**REP5-005**] (updated at Deadline 6) includes requirement 24 for provision of a construction traffic management plan, to be produced in accordance with the Outline Construction Traffic Management Plan [**REP5-068**] ("Outline CTMP") (updated at Deadline 6) and therefore it is proposed to provide any additional measures in the stage specific CTMPs. The stage specific CTMPs which must be in accordance with the Outline CTMP are to be provided by the delivery contractor (who is yet to be appointed) for approval of WSCC at the appropriate time if development consent is granted.
- 5.12.6 The Applicant confirmed at ISH1 and set out in the Applicant's Post Hearing Submission – Issue Specific Hearing 1 [**REP1-033**] that as all matters relating to construction are set out in the Outline Code of Construction Practice [**REP5-064**], the Applicant had taken the same approach to construction hours. The draft Development Consent Order [**REP5-005**](updated at Deadline 6) secures all of the detail within the Outline Code of Construction Practice via requirement 22. In its response to Action Point 12 which arose at ISH1 [**REP1-025**], the Applicant noted that a number of Interested Parties had requested a change to the proposed construction working hours to include 'shoulder hours' to minimise potential disruption at the start and finish of the working day. In response, the Applicant adopted shoulder hours and updated the Commitments Register [**REP5-087**] (updated at Deadline 6) and the Outline CTMP accordingly [**REP5-068**] (updated at Deadline 6).

*"Core working hours for construction of the onshore components will be 08:00 to 18:00 Monday to Friday, and 08:00 to 13:00 on Saturdays, apart from specific circumstances that are set out in the Outline COCP, where extended and continuous periods of construction are required. Prior to and following the core working hours Monday to Friday, a 'shoulder hour' for mobilisation and shut down will be applied (07:00 to 08:00 and 18:00 to 19:00). 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 use of heavy plant or activity resulting in impacts, ground breaking or earthworks."*

- 5.12.7 The utilisation of shoulder hours in this way allows for vehicles to arrive on site between 07:00 and 08:00, prior to the commencement of core hours. This means that the originally proposed delivery hour from 06:00 to 07:00 (Paragraph 8.4.13 of the Outline CTMP [**PEPD-035a**]) is no longer needed, and was removed from the Outline CTMP presented at Deadline 1 [**REP1-010**].
- 5.12.8 In its response to Action Point 17 which arose at ISH1 [**REP1-025**], the Applicant confirmed that at peak construction, taking account of the construction traffic routing contained within the Outline CTMP [**REP5-068**] (updated at Deadline 6), construction traffic flow impacts within Cowfold would be less than 10% for HGVs and 1% for total traffic and therefore would not be significant. In relation to these assessments, the Applicant notes that West Sussex County Council in their role as host local highway authority has agreed the acceptability of baseline traffic data and assessment methodology used within Chapter 23: Transport, Volume 2 of the ES [**APP-064**] and Chapter 32: ES Addendum, Volume 2 of the ES [**REP1-006**].



This was confirmed by WSCC in their response to the Examining Authority's First Written Questions **[REP3-073]**.

- 5.12.9 In response to Action Points 14 and 16 which arose from ISH1, the Applicant provided further detail on the feasibility of various accesses being serviced by haul roads **[REP1-022]**, with the Applicant concluding that this would not be feasible due to the constraints which exist at each location, spanning water course etc
- 5.12.10 At ISH2 a number of Action Points arose related to the traffic management strategy proposed to support use of construction access A-61 and A-64 on Kent Street. Further information on the proposed junction widening, passing places and carriageway repair / reinstatement were submitted in response Action Point 38, 39 and 40 confirming the feasibility of these topics. The traffic management strategies for A-26 and A-28 on Michelgrove Lane and A-61 and A-64 on Kent Street were also updated to provide further information on how safety would be maintained for pedestrians, cyclists and horse riders using each link in response to action points 42 and 50.
- 5.12.11 Following on from completion of the traffic management strategies for Michelgrove Lane and Kent Street, the Applicant provided an update to Chapter 32: ES Addendum, Volume 2 of the ES at Deadline 5 **[REP5-038]** (updated at Deadline 6) to take account of updated construction traffic routing and commitments included in the Outline Construction Traffic Management Plan **[REP5-068]** (updated at Deadline 6) since Deadline 1. This update confirmed the conclusions of the ES Addendum as remaining valid, with significant effects associated with the Proposed Development being limited to pedestrian amenity, pedestrian delay and fear and intimidation on Michelgrove Lane and Kent Street. These significant effects will be temporary and short-term, related the peak periods of construction traffic activity of these links.
- 5.12.12 In response the Examining Authority's Second Written Questions the Applicant provided an updated Outline Construction Traffic Management Plan **[REP5-068]** (updated at Deadline 6) to respond to comments made by WSCC, Horsham District Council and South Downs National Park Authority. This has confirmed the latest position on visibility splay requirements for construction access junctions, abnormal loads, coordination between construction projects and temporary speed limits. Following on from comments raised by Bolney Parish Council **[REP4-102]** and Climping Parish Council **[REP4-103]** at Deadline 4, details have been included in the Outline Construction Traffic Management Plan **[REP5-068]** (updated at Deadline 6) of routes which are unsuitable for use by construction traffic and should be avoided.
- 5.12.13 Prior to the Deadline 6 the Applicant has continued to engage with WSCC with Road Safety Audits submitted to WSCC and decision logs agreed for access A-05, A-39, A-62, A-63 and the A-61 and A-64 traffic management strategy (including passing places and proposed junction widening). This meets the RSA requirements set-out in Appendix C of the Outline Construction Traffic Management Plan **[REP5-068]** (updated at Deadline 6). The outcomes of the decision logs will be progressed as part of detailed design and discharged through requirement 15 or 16 of the draft Development Consent Order **[REP5-005]** (updated at Deadline 6) subject to development consent being granted.
- 5.12.14 Updates have also been made to the Outline Construction Traffic Management Plan **[REP5-068]** at Deadline 6 to reflect discussions held with WSCC and National Highways. These include clarification of temporary speed limits and management of vehicle layover on the Strategic Road Network. Based upon the updates made, the Outline Construction Traffic Management Plan **[REP5-068]** is agreed with

WSCC (see WSCC48 in the Statement of Common Ground – West Sussex County Council **[REP5-094]**(updated at Deadline 6) and National Highways (see NH07 Statement of Common Ground – National Highways **[REP5-098]**). Further details will be provided in the stage specific Construction Traffic Management Plans for approval of the relevant highways authority in accordance with Requirement 24.

5.12.15 The Applicant has assessed in detail the impacts on traffic a result of the Proposed Development. A range of measures, including those included in the Outline Construction Traffic Management Plan **[REP5-068]** (updated at Deadline 6), are embedded into the Proposed Development to manage traffic and minimise impacts and, with the exception of significant effects to pedestrian amenity, pedestrian delay and fear and intimidation identified on Michelgrove Lane and Kent Street in the peak construction period, no significant effects on transport and traffic are assessed. Therefore, it is considered that Proposed Development accords with the NPS policy requirements set out in Section 5.13 of NPS EN-1 (DECC, 2011a), specifically paragraphs 5.13.3-4, 5.13.6, 5.13.8-9, and 5.13.11, and the policy requirements in Section 5.14 of NPS EN-1 (DESNZ, 2023), specifically paragraphs 5.14.5-8, 5.14.11, 5.14.14-15, and 5.14.18-19. The Applicant has identified no likely significant effects on Air Quality arising from the proposed development, including no effect on the Cowfold AQMA. Nonetheless, in response to a request by Horsham District Council, an Air Quality Mitigation Strategy **[REP3-053]** (updated at Deadline 6) has been developed and approved by HDC. This provides compensation for any residual effects on air quality from construction traffic, and is secured through the Horsham District mitigation and enhancement scheme to be provided in discharge of requirement 41 of the draft Development Consent Order (**[REP5-005]** (updated at Deadline 6)). This is intended to be secured through completion of a section 106 agreement.

## 6. **COMPULSORY ACQUISITION AND TEMPORARY POSSESSION**

### **Section 122(2) of the Planning Act 2008**

- 6.1 The Applicant seeks powers to compulsorily acquire land, new rights and restrictive covenants over land, and powers to temporarily use land. All of the land and rights sought, including the powers to temporarily possess land, are:
- 6.1.1 required for the development to which the development consent relates (section 122(2)(a) Planning Act 2008), and/or
  - 6.1.2 required to facilitate or are incidental to that development (section 122(2)(b)).
- 6.2 Section 6 of the Statement of Reasons **[AS-034]** provides a comprehensive description of the land and rights sought and of the works for which they are required. Appendix 1 to the Statement of Reasons **[AS-036]** provides a plot-by-plot explanation of the works for which the land and rights are required. It is notable that none of the Affected Parties who have made representations in respect of compulsory acquisition matters dispute the requirement for those works as part of the Proposed Development, and only NGET and National Highways dispute the requirement as a matter of principle for the Applicant to acquire land, new rights, restrictive covenants or temporarily use land for the purposes of those works.
- 6.3 The Applicant acknowledges that the Order Limits contain flexibility over the final siting of works, which is controlled by the limits of deviation and the requirements of the draft DCO **[AS-031]**. Consequently, whilst it will not be necessary to acquire interests in or rights over all of the land within the Order Limits, it is

necessary to seek the compulsory acquisition and temporary possession powers over all of that land to ensure that the Proposed Development can be delivered. This is an accepted approach for Nationally Significant Infrastructure Projects (NSIPs) and is one which has been accepted by the Secretary of State in many made orders, such as the Sheringham & Dudgeon, Awel-y Mor, Triton Knoll Electrical System, East Anglia One and Two, and the four Hornsea Wind Farm DCOs. The Applicant seeks no greater flexibility in the linear cable corridor than other comparable offshore wind schemes and the degree of flexibility sought is proportionate to requirements of the Proposed Development and the impacts upon Affected Parties.

- 6.4 The Applicant's Change Request **[AS-046]**, which was accepted on 24 July 2024 **[PD-018]** reduced the Order Limits in a number of locations and/or revised the nature of the land rights sought over the land to seek a lesser type of acquisition power. However, any further reductions in the Order Land would materially prejudice the Applicant's ability to deliver the Proposed Development and the significant public benefits that it will bring.
- 6.5 The final layout and spatial extent of the laid cables within the cable construction corridor will be determined during detailed design. Flexibility within the construction corridor is however still required due to the potential for obstacles and ground conditions that are only revealed during the construction works. The use of temporary possession powers will therefore enable the Applicant to get underway with the construction works under temporary possession powers, while it is still ascertaining and refining the scope of the requirement for the acquisition of permanent rights and/or the imposition of permanent restrictive covenants. In this way, the Applicant is able to ensure that permanent compulsory acquisition powers are only exercised over the minimum land required.
- 6.6 The Applicant has explained how and when the detailed design of the Proposed Development will be undertaken (Response to Action Points Arising from Issue Specific Hearing 2 and Compulsory Acquisition Hearing 1 **[REP4-074]** CAH1 Action 1), and how this will be governed by the plans which are secured as Requirements in Schedule 1 to the DCO **[AS-031]**, in particular the stage-specific Code of Construction Practice (CoCP)(DCO Requirement 22) and the Construction Method Statements (CMS), (DCO Requirement 23). The CMS **[REP5-088]**, which is required to be approved by the relevant planning authority for the relevant stage of works pursuant to Requirement 23(2)(f), will include the final location and width of the cable construction corridor for the relevant stage. A plan will be included in this document showing the working corridor and any wider areas required for trenchless crossings, together with the associated trenchless crossing compounds. The 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.
- 6.7 In preparing the CMS, the Applicant will comply with the Agricultural Liaison section of the CoCP (Paragraph 2.6 of the Outline Code of Construction Practice **[AS-043]**) which explains how the Agricultural and Land Liaison Officer (ALLO) will engage with Affected Parties during the construction phase of the project. This role, which was expanded by the Applicant during the Examination, will include engagement with Affected Parties as part of finalising the proposed construction corridor prior to submission of the stage specific CoCP and CMS for approval; liaison to agree site specific accommodation works and mitigation measures; engagement on construction traffic routeing; keeping Affected Parties apprised of construction activities and timescales; and communicating the final permanent land requirements.

- 6.8 Should it be necessary to do so, the Applicant intends to exercise its compulsory acquisition powers to acquire the new rights and restrictive covenants for the final cable alignment when the final permanent corridor extent and location are known. Once installation of the cable is complete, 'as built' plans will be prepared to show the permanent cable easement which comprises the cable and a protective buffer. This plan will be shared with the landowner and form the basis of the 99-year voluntary deeds of grant for the easement or, if agreement has not been reached, will inform the linear corridor over which compulsory acquisition powers need to be exercised. There may however still be a need to acquire new rights over land outside of the permanent cable corridor, for example any rights of access that might be needed over the remaining land to 'join up' with the final permanent corridor.
- 6.9 The wider construction corridor land which is no longer required once construction has completed, will be reinstated and returned to the landowner, as required by Articles 33(5) and 33(6) of the DCO **[AS-031]** when temporary possession of land has been taken. Reinstatement of land will be carried out in accordance with the outline management plans including the Outline Soils Management Plan **[REP5-066]** pursuant to Requirement 22 of the DCO **[AS-031]** and the Outline Landscape and Ecology Management Plan **[REP5-072]** pursuant to Requirement 12 of the DCO **[AS-031]**.
- 6.10 Furthermore, the Applicant expanded its commitments in the CMS **[REP5-088]** during the Examination, in which it has committed to acquire no greater land, or acquire new rights or impose restrictive covenants over no greater land, than appears to be reasonably required following the detailed design of the Proposed Development. It has also made commitments in respect of the disposal of surplus land, and the release or variation of rights that become surplus (Outline Construction Method Statement **[REP5-088]**).
- 6.11 The proposed compulsory acquisition of land, new rights and restrictive covenants sought by the Applicant is therefore necessary and proportionate and meets the tests in Section 122(2)(a) and section 122(2)(b) of the Planning Act 2008.

### **Section 122(3) of the Planning Act 2008 – A compelling case in the public interest**

- 6.12 The Applicant considers that the condition contained in s122(3) of the Planning Act 2008 for there to be a compelling case in the public interest for the land, rights and restrictive covenants to be acquired compulsorily, has been met. The Applicant's justification for the compulsory acquisition powers sought is contained in its Statement Reasons. The Applicant further set out the compelling case in the public interest to authorise the compulsory acquisition in the Applicant's Responses to Examining Authority's First Written Questions (ExQ1) at LR1.8 **[REP3-050]**.
- 6.13 A summary is provided below of how the requirements of the Guidance Related to Procedures for the Compulsory Acquisition of Land (September 2013) ("the CA Guidance") have been satisfied.
- Paragraph 8 of the CA Guidance: Alternatives**
- 6.14 The Applicant has given extensive consideration to reasonable alternatives to compulsory acquisition and temporary possession. Section 8 of the Statement of Reasons **[AS-034]**; ES Chapter 3: Alternatives, Volume 2 **[APP-044]**), and Section 4.3 of the Planning Statement **[APP-036]** explain the approach that has been taken to the site selection process.

- 6.15 The consideration of alternatives at each stage of the process has been thorough and rigorous and has been a continuous and iterative one. As alternatives and refinements have been proposed by Affected Parties the Applicant has given reasonable consideration to such proposals and has, where appropriate, made changes to the design and route. Where alternatives proposed by landowners have been demonstrated not to be workable alternatives, the Applicant has sought to provide further alternatives for consideration with a view to reaching an agreed position with landowners. While it has not always been possible to accommodate alternative proposals, the Applicant has given genuine consideration to alternatives and sought to refine or revise the acquisition requirements accordingly.
- 6.16 The Applicant also set out in some detail in the Applicant's Response to the ExA's Written Questions (Response LR.13) **[REP3-050]** how the Applicant has considered suggestions and requests made by Affected Parties to reduce or mitigate the impact of the Proposed Development on their interests. Appended to that response at Table 1 of Appendix B LR: Changes further to Affected Persons Representations **[REP3-050]** is a list of key changes made by the Applicant as a result of feedback from affected persons during the Applicant's consultation and engagement exercises. In summary, the Applicant has given consideration to approximately 90 alternatives (changes to cable route, access or construction methods e.g. HDD) which have been proposed by landowners (or the Applicant in response to comments/alternatives proposed by the landowners) during the evolution of the project, some of which have resulted in changes being made where reasonable and appropriate to do so.
- 6.17 There are a number of Affected Parties who continue to advance alternative route options (including the Wiston Estate, Mr Dickson, Green Properties and Susie Fischel). The Applicant has assessed these proposals and provided clear reasons, with support from its engineering, environmental and land teams, as to why these route options cannot be taken forward. These proposals from Affected Parties are not reasonable deliverable alternatives which would avoid the need for compulsory acquisition or temporary possession powers.
- 6.18 Insofar as those Affected Parties have proposed new alternative routes or revised versions of route options during the Examination, the Applicant draws attention to Paragraph 4.3.29 of NPS EN-1 (DESNZ, 2023).
- 6.19 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.
- 6.20 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. Notwithstanding, the Applicant has still given consideration to those alternatives and provided its responses. These demonstrate that 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.

- 6.21 A number of Affected Parties (Wiston Estate, Green Properties, Mr Dickson and Susie Fischel) have sought to misrepresent the requirements of Paragraph 8 of the CA Guidance, asserting that reasonable alternatives must have been *exhausted*. The requirement in the CA Guidance is not to exhaust all alternatives but to have *explored* them: "*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 submits that it has done so and that the compelling case in the public interest is met.
- 6.22 Moreover, it has been suggested that where a less harmful or less intrusive alternative exists it should be adopted in favour of the Applicant's proposal. However, as explained by the Applicant in its responses to submissions [REP4-070] and [REP5-122] this proposition has been rejected by the Courts in a number of compulsory purchase cases (including by 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\*](#); the High Court in [\*Pascoe v First Secretary of State \[2006\] 4 All E.R. 1240\*](#), [\*Clays Lane Housing \[2005\] 1 WLR 2229\*](#) and [\*Belfields Ltd v Secretary of State for Communities and Local Government \[2008\] J.P.L. 954\*](#)).

**Paragraphs 8, 10, 13 and 14 of the CA Guidance: Legitimate Purpose, Proportionality, Interference with Private rights, Public Sector Equality Duty**

- 6.23 The proposed interference with private rights is for a legitimate purpose and accords with relevant national and local planning policy, as explained in the Planning Statement [APP-036] and in the section above of these submissions. Section 4.2 of the Planning Statement provides details of the need for the Proposed Development and of the overwhelming positive benefits that will be generated by it.
- 6.24 The proportionality of any interference is ensured by the Applicant's approach to the powers sought, which minimise the extent of permanent acquisition. Freehold acquisition has been kept to an absolute minimum, solely in relation to the land required for the Oakdene onshore substation. Temporary possession only powers are sought for works and the use of land which are solely required during the construction of the project. The Applicant's stated intention to use temporary possession powers for the installation of the cable, followed by permanent powers for the cable easement over a lesser area wherever practicable, will also enable the Applicant to exercise the powers in a proportionate manner. Furthermore, as explained in section 6.10 above of these submissions, the Applicant has given an extensive range of binding commitments which seek to mitigate the impact upon landowners and occupiers.
- 6.25 Section 13.1 of the Statement of Reasons [AS-034] sets out how Article 1 of the First Protocol to the European Convention on Human Rights (ECHR) and Articles 6 and 8 of the ECHR and the Human Rights Act 1998 have been considered. The Applicant has carefully considered the human rights of Affected Persons, including in relation to site selection, the consideration of alternative route options and the proposed land and land rights sought.
- 6.26 The Applicant has weighed the potential infringement of ECHR rights in consequence of the inclusion of compulsory acquisition powers within the DCO as against the expected public benefits if the DCO is made and has concluded that the significant public benefits of making the DCO outweigh the effects of the proposed compulsory acquisition and temporary possession powers upon persons

who own property within the Order limits such that there would not be a disproportionate interference with their Article 8 and Article 1 First Protocol rights.

- 6.27 With regards to Article 1 and Article 8, whilst rights are proposed to be acquired over land that is used in connection with dwellings, such as accesses, driveways and boundary features, and there are residential dwellings in proximity to the Order Limits, there are no dwellings within the Order Land. No residents or businesses will be displaced by the powers of compulsory acquisition sought in the Order and no residential dwellings or business premises are proposed to be acquired or demolished for the purposes of the Proposed Development. Only limited powers of compulsory acquisition and/or temporary use are sought over land used in connection with a dwelling so as to provide access for construction and/or operational purposes.
- 6.28 In relation to Article 6 of the ECHR: Affected Persons have been able to make representations on the application for development consent prior to the application being made through non-statutory and statutory consultation; the 2008 Act provides for a detailed examination of any application for development consent by an independent Examining Authority and the Examination includes careful scrutiny of any powers of compulsory acquisition and temporary possession powers, to ensure that they are justified and proportionate. All Affected Persons have had the opportunity to make oral and written representations about the compulsory acquisition requests. Those whose interests are acquired under the DCO will also be entitled to compensation which will be payable in accordance with the Compulsory Purchase Compensation Code. Any infringement of the ECHR rights of those whose interests are affected by the inclusion in the DCO of powers of compulsory acquisition and temporary possession, is proportionate and legitimate and is in accordance with national and European law.
- 6.29 With regards the public sector equality duty (PSED), in section 149 of the Equality Act 2010, this applies to the Secretary of State for Energy Security and Net Zero who will determine the application for the Order. Whilst the PSED does not apply to the Applicant, the Applicant has had regard to the PSED and has carried out an Equality Act Impact Assessment (Equality Statement, Appendix 28.3, Volume 4 to Environmental Statement) (Document Reference: 6.2.4) **[APP-221]**. The assessment concludes that no adverse equality effects are expected as a result of the construction, operation and maintenance, or decommissioning phases of the Proposed Development. No person has challenged the conclusions of that Equality Impact Assessment.
- 6.30 The Applicant's Statement of Reasons **[AS-034]**, section 13.2, provides further explanation of how the Applicant has had regard to the PSED throughout the evolution of the process. Paragraph 13.2.5 explains that the position will be continually monitored and should any persons be identified who may be adversely impacted by the Proposed Development, the Applicant will seek to identify and implement appropriate assistance measures if reasonably required so as to mitigate so far as practicable any identified activity that may have an adverse impact on persons who share a relevant protected characteristic as defined in the Equality Act 2010.
- 6.31 One affected party has expressly raised the PSED in his representations, specifically in a confidential submission submitted by Lester Aldridge on Mr Dickson's behalf **[REP3-138]**. The Applicant has responded to these points in the Applicant's Comments on Deadline 3 Submissions (CONFIDENTIAL)- Mr Dickson **[REP4-080]**.

- 6.32 The Applicant submits that in the event that the Secretary of State finds that the draft DCO **[AS-031]** will have an impact upon persons with protected characteristics which cannot be fully mitigated, the Secretary of State is still entitled to and should find that the significant public benefits which will be delivered by the Proposed Development outweigh the interference with private rights, including impacts upon persons with a protected characteristic, and that there is a compelling case in the public interest for the making of the DCO.
- 6.33 In this regard, the Applicant refers to the Secretary of State for Communities and Local Government decision to confirm two compulsory purchase orders made by the London Borough of Barnet to facilitate its Brent Cross Cricklewood regeneration scheme as examples where powers of compulsory acquisition were authorised notwithstanding the potential impact on persons with protected characteristics. Please see further the Applicant's response in **REP5-122** and paragraphs 50-54 of the decision letter which is **Appendix G**.
- Paragraph 9 of the CA Guidance: How the land will be used**
- 6.34 The Applicant has a clear idea of how it intends to use the land, as explained in Section 6 of the Statement of Reasons **[AS-034]** and in the plot-by-plot explanation in Appendix 1 **[AS-036]**. The Applicant has justified the degree of flexibility sought, in particular in relation to those locations where the Order Limits are necessarily wider than elsewhere so as to address site specific constraints (Applicant's Response to the Examining Authority's First Written Questions LR1.9, LR1.24 **[REP3-051]**, and the Applicant's Response to CAH1 Actions **[REP4-074]**).
- Paragraphs 9, 17, 18 and 19 of the CA Guidance: Resource Implications**
- 6.35 The Applicant seeks a period of 7 years in which to implement the compulsory acquisition powers pursuant to Article 26 of the DCO, and to commence the development proposed to be authorised by the DCO. The reasons for this were explained in response to DCO1.14, in order to allow sufficient time to secure a Contract for Difference, and to address the supply chain challenges that particularly affect offshore wind projects. The 7 year period sought is consistent with recently made orders for offshore wind projects including the Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024, and the Hornsea Four Offshore Wind Farm Order 2023.
- 6.36 Subject to the making of the dDCO, there are no known impediments to the delivery of the Proposed Development. As set out in the Statement of Reasons **[AS-034]** at paragraph 12.1.9, the Applicant has entered into two agreements for lease (AFLs) with The Crown Estate in respect of the Extension and Zone 6 seabed areas which together comprise the array area for the Project. An additional AFL for transmission assets is required, which is at an advanced stage of drafting and is expected to complete very shortly. The Applicant will inform the Secretary of State when the agreement has been entered into.
- 6.37 The Applicant has a confirmed Grid Connection offer from National Grid, and a confirmed location for the extension to the existing substation at Bolney where the Applicant will deliver its works to enable the connection to the National Grid. Detailed design work is ongoing, which will enable an Interface and Connection Agreement to be concluded.
- 6.38 The Order will grant consent for the construction, operation, maintenance and decommissioning of the Project. There are a number of additional consents and licences that may be required from bodies such as Natural England and the Environment Agency but the Applicant is not aware of any reason why the other consents and licences listed in the Other Consents and Licences register **[APP-033]** will not be granted at the appropriate time.



6.39 In the Funding Statement [REP4-009] an explanation has been provided of the Applicant's track record of delivering major infrastructure projects and its financial standing. It also demonstrates how it is expected that the construction of the Proposed Development and the acquisition of the land or rights over the land will be funded, as well as compensation arising from the exercise of powers of compulsory acquisition, and for any successful blight notices, howsoever unlikely. This evidence has not been challenged by any Affected Parties and the tests in the CA Guidance have clearly been satisfied.

**Paragraphs 25-26 of the CA Guidance – Consultation and Negotiations**

6.40 As explained in the Consultation Report [APP-021] the Proposed Development has been extensively publicised and consultation has taken place with the community, affected landowners and occupiers, and key stakeholders. In accordance with Part 5 of the 2008 Act, the Applicant has consulted with persons set out in the categories contained in Section 44 of the 2008 Act, which includes owners of land within the Order Land and those who may be able to make claims either under Sections 7 and 10 of the Compulsory Purchase Act 1965 in respect of injurious affection or under Part 1 of the Land Compensation Act 1973. Also, the beneficiaries of rights overridden by the exercise of powers in the Order would be capable of making claims under Section 10 of the Compulsory Purchase Act 1965.

6.41 The Applicant has, and will continue to, negotiate with relevant landowners to acquire the land and rights in land necessary for the Proposed Development, as explained in the Statement of Reasons [AS-034]. The Applicant's land assembly strategy has been, and continues to be, to seek to agree voluntary arrangements and to limit and reduce the extent of compulsory acquisition and temporary possession powers required.

6.42 The Applicant submits that it has complied with Paragraph 25 of the CA Guidance 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 DCO [AS-031] for compulsory acquisition at the outset. However, the Applicant has continued 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 Affected Parties.

6.43 Further detail on the Applicant's land acquisition strategy; its approach to the payment of professional fees and commercial offers; and its meaningful attempts to secure the necessary land rights by agreement, is provided in its Land Acquisition Strategy [REP5-130], the Land Rights Tracker [REP5-010] and the Land Engagement Reports which it has submitted at Deadline 6 to detail the meaningful engagement with and current status of discussions for each landowner. These documents show that the Applicant has been making every effort to engage meaningfully with Affected Parties and that in the absence of concluded agreements there is clearly a need and a compelling case for the authorisation of the compulsory acquisition powers sought.

6.44 A summary of the overall position as at Deadline 6 is provided below. Please note that the number of each type of agreement sought has altered slightly from the numbers provided in response to EXQ2 LR2.2 [REP5-115] due to updated minor changes in the type of land agreements sought.

6.45 **Agreements required for the various elements of the Proposed Development= 109**

- Onshore substation and Cable rights - 80
- Construction and Operational Access – 26
- Visibility splays – 3

6.46 **Key Terms signed and/or agreed=26**

- Onshore substation and Cable rights - 21 (26% of the total number of Onshore substation and cable easements required)
- Construction and Operational Access - 5 (19% of the total number of access agreements required)

6.47 **Number of agreements completed= 2**, being the two Option agreements that have been completed with the three Oakendene entities, for the substation and cable easement.

6.48 It can be seen that the Applicant continues to make good progress with negotiations, having agreed 23 sets of Key Terms and completed 2 agreements since the Application was submitted, and having agreed 18 sets of Key Terms since CAH1.

6.49 As explained in response to EXQ2, LR 2.2 **[REP5-115]** it is not uncommon for linear NSIPs to have a number of outstanding negotiations to conclude at the close of the Examination, with examples including the recent HyNet CO2 Pipeline Order. That order involved 104 Affected Parties with whom 11 Key Terms had been agreed by the close of the Examination. Whilst one should not solely assess progress with meaningful negotiations in numerical terms, the Applicant notes that it has secured agreement with more parties than the promoter of that order.

6.50 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 can be delivered and that its significant public benefits can be realised. The non-grant of compulsory acquisition powers would put the delivery of the Proposed Development, and the extensive public benefits it will bring, at significant risk.

6.51 A number of Affected Parties (Wiston Estate, Mr Dickson and Green Properties) have invited the Examining Authority to recommend that compulsory acquisition powers should not be authorised, and have referred to the Court of Appeal decision in *R. (FCC Environment) v SSECC [2015] Env L.R. 22* as authority for a position where compulsory acquisition may not be justified despite a project being supported by a national policy statement and meeting an urgent identified need. The example circumstances given by the Court in paragraph 11 of that decision are not at all comparable to the proposed DCO for the Proposed Development. Those example scenarios being where:

- the land sought to be acquired exceeds what is necessary to construct the proposal;
- the acquisition of a more limited right, rather than the entire land, would suffice;
- the owner is willing to agree to a sale and accordingly it is unnecessary to compel him to do so;

- 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.

6.52 In the present case:

- the land proposed to be acquired by the Applicant is not excessive. Generalised comments have been made by Affected Parties about the width of the Order Land or about particular locations where there is greater flexibility in the Order Limits, but those parties have not substantiated an argument that any part of the Order Land in which they have an interest is not required for the purposes in s122(2) of the Planning Act 2008;
- the Applicant's land acquisition strategy is proportionate and, no parties have 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, there are currently no circumstances where there is a binding agreement with an Affected Party that can be relied upon as an alternative to compulsory acquisition. The Applicant notes however that National Grid and National Highways contend that compulsory acquisition is not necessary because there are other alternatives to compulsory acquisition available (see further below the Applicant's response to those points);
- the Applicant has given extensive consideration to alternative options and routes, including those proposed by Affected Parties, and has provided sound reasons for rejecting them. There are no reasonable deliverable alternatives which should be preferred to the Applicant's proposals.

6.53 The proposed DCO **[AS-031]** 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.

6.54 A number of parties (Wiston Estate, Mr Dickson, Green Properties, and Susie Fischel) also refer to the refusals to confirm the London Borough of Barking and Dagenham Council (Vicarage Field and Surrounding Land) Compulsory Purchase Order 2021, and 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 Applicant has explained in its responses in **[REP5-122]** why the circumstances of those CPOs are vastly different to the Proposed Development and it does not address those decisions further in these submissions.

6.55 For the above reasons, the Applicant considers that the condition contained in s122(3) of the Planning Act 2008 for there to be a compelling case in the public interest for the proposed land, rights and restrictive covenants to be acquired compulsorily pursuant to the DCO, has been met.

## Crown Land- Section 135 Planning Act 2008

- 6.56 Section 12.1 of the Statement of Reasons [**AS-034**] provides details of the Crown Land and Crown Interests within the Order Land. A summary of the plots which there are Crown and special category land interests is also provided at Appendix 7 to the Statement of Reasons [**AS-038**]. These details have been updated in the Deadline 6 documents because, since the Application was submitted, the Applicant has confirmed with the relevant Crown Authorities that those interests belonging to the Official Solicitor and the Public Trustee are not Crown Interests; and that DEFRA no longer has the benefit of the interests recorded as belonging to it. The Applicant understands it is now the Secretary of State for Transport who has the benefit of one of the former DEFRA interests albeit it awaits final confirmation of the same.
- 6.57 Section 135(1) of the Planning Act 2008 is engaged by the draft DCO because it seeks authorisation to acquire new rights and restrictive covenants over interests in land which are held otherwise than by or on behalf of the Crown. This applies to the land at the foreshore which is owned by The Crown Estate.
- 6.58 Section 135(2) of the Planning Act 2008 is engaged because there are Crown interests in land which is owned by other parties. This affects Crown Interests belonging to the Forestry Commission and the Secretary of State for Transport.
- 6.59 Article 50 of the Order [**AS-031**] confirms that the Applicant may not prejudicially affect or interfere with a Crown interest or use land/enter land in which a Crown interest subsists without written consent.
- 6.60 The Applicant has been engaging with the relevant Crown Authorities to obtain the section 135(1) and section 135(2) consents required to the making of the DCO. The current position being as follows:

| <b>Crown Authority</b>  | <b>Plot Numbers</b>  | <b>Section 135(1) Consent Required ?</b> | <b>Section 135(2) Consent Required ?</b> | <b>Status</b>  |
|-------------------------|--|--|--|--|
| The Crown Estate        | 1a/1, 1a/2 (presumed owner) 1b/1, 1b/2, 1/1, 1/2, 1/3, 1/4 | Y  | Y  | The Crown Estate has issued draft documents to progress agreement for the necessary consents. It is understood that any such consent will not be provided by the Crown Estate until after the close of the Examination. The Applicant will write to update the Secretary of State if and when the consents have been provided. |
| The Forestry Commission | 11/4, 11/5, 11/7, 11/8, 19/6, 21/32, 21/33,                | N  | Y  | The Applicant is awaiting confirmation that the Forestry Commission consents under section 135(2). In the event that this is not received before the close of the Examination  |

| <b>Crown Authority</b>               | <b>Plot Numbers</b> | <b>Section 135(1) Consent Required ?</b> | <b>Section 135(2) Consent Required ?</b> | <b>Status</b>   |
|--------------------------------------|---------------------|--|--|---|
|                                      | 21/36, 21/37, 22/7  |  |  | the Applicant will update the Secretary of State as soon as practicable thereafter.   |
| The Secretary of State for Transport | 33/18               | N  | Y  | The Applicant is awaiting confirmation that the Secretary of State for Transport does have the benefit of this interest, and if so that they consent under section 135(2). In the event that this is not received before the close of the Examination the Applicant will update the Secretary of State as soon as practicable thereafter. |

#### **National Trust Land – Section 130 of the Planning Act 2008- [RR-390]**

- 6.61 The Applicant seeks the compulsory acquisition of new rights and restrictive covenants over Plot 22/7 which is held inalienably by the National Trust, and therefore, if the National Trust's objection to compulsory acquisition is not withdrawn, would require the order to be subject to Special Parliamentary Procedure.
- 6.62 It should be noted that the Order also includes land owned inalienably by the National Trust which is proposed to be used temporarily only (Plots 23/32, 23/33, 21/36 and 21/37). These parcels are shown on the special category land plans **[AS-027]** albeit the provisions of section 130 are not engaged in relation to these land parcels as they are not subject to compulsory acquisition. The land is let to and used by a tenant on a 99-year lease, the Lorica Trust.
- 6.63 The National Trust has an assumed subsoil interest in part width of the highway in Plot 21/30 which the Applicant understands does not comprise inalienable land. Nor is it addressed in any of the National Trust's representations. In any event, the provisions of section 130 are not engaged in relation to this land as it is not subject to compulsory acquisition powers, only powers of temporary possession.
- 6.64 Furthermore, the National Trust has the benefit of a section 8 National Trust Act 1937 covenant, known as the Normanby Covenant. This does not comprise inalienable land, and it is not therefore shown on the Special Category Land Plans **[AS-027]**. Nor is section 130 of the Planning Act 2008 engaged in relation to this land.
- 6.65 The Applicant is seeking: an option for a deed of easement for the inalienable land comprising Plot 22/7 Jockey's Meadow; a consent for a sub lease with the Lorica Trust for the construction access for the land let to the Lorica Trust; and a 'deed of release' of the Normanby Covenant. Heads of Terms for the option, consent and sublease agreements have been agreed and negotiations on the final documents

are well progressed. The deed of release is in an agreed form and is expected to complete shortly. The Applicant and the National Trust will update the Secretary of State as soon as practicable.

### **Special Category Land- Commons, Open Space and Allotments- Section 132 Planning Act 2008**

6.66 Section 12.2 of the Statement of Reasons [**AS-034**] summarises the special category land within the Order Land and explains why the Applicant considers the tests in Section 132 for the acquisition of new rights/restrictive covenants over that land to be met. The Special Category Land Plans [**AS-027**] identify where the special category land is located, the type of special category land, and the proposed type of compulsory acquisition.

6.67 A summary of the special category land which is proposed to be subject to powers of compulsory acquisition is provided below.

| <b>Plot(s)</b>                                    | <b>Special Category</b>         | <b>Proposed Compulsory Acquisition</b>  | <b>Works No.</b> |
|---|---------------------------------|---|------------------|
| 1a/1, 1a/2,<br>1b/1, 1b/2,<br>1b/3, 1b/4,<br>1b/6 | Assumed<br>Open Space           | Underground Cable Connection Rights<br>and Underground Cable Restrictive<br>covenants | 6                |
| 1b/5  | Assumed<br>Open Space           | Underground Cable Connection Rights<br>and Underground Cable Restrictive<br>covenants | 5                |
| 1/1, 1/2, 1/3,<br>1/4                             | Assumed<br>Open Space           | Underground Cable Connection Rights<br>and Underground Cable Restrictive<br>covenants | 6                |
| 1/5, 1/6  | Assumed<br>Open Space           | Onshore Connection Rights and Cable<br>Restrictive covenants                          | 7                |
| 22/7, 22/9  | Open Space                      | Cable Rights and Cable Restrictive<br>Covenants                                       | 9                |
| 22/8  | Open Space<br>and<br>Allotments | Cable Rights and Cable Restrictive<br>Covenants                                       | 9                |
| 27/10, 27/24,<br>27/25, 27/26                     | Common<br>Land                  | Construction and Operational Access<br>Rights   | 14               |

6.68 In each case, the Applicant relies upon the exemption in section 132(3), which applies if the order land, when burdened with the order right, will be no less advantageous than it was before to the following specified persons: the persons in whom it is vested; other persons, if any, entitled to rights of common or other rights; and the public.

- 6.69 The existing use of the special category land can continue both during the construction and operational phases of the Proposed Development, except in the case of an emergency. The land will not be fenced during construction, the cable will be installed using trenchless techniques and there will not be any above ground works that limit the use of the land or its physical appearance. There will be no permanent interference with the enjoyment of the rights by specified persons. Accordingly, the Applicant considers that the use of the special category land by the specified persons, when the land is burdened by the proposed New Rights and/or Restrictive Covenants, will be no less advantageous than it was beforehand, and the test in section 132(3) is met. This conclusion has not been challenged by any of the Affected Parties.
- 6.70 For completeness, special category land which is subject to temporary possession powers only (Plots 27/6, 27/9, 27/11, 27/12) is also shown on the Special Category Land Plans even though the temporary use of land does not engage section 132. In any event, any interference with the use of the special category land during construction will be temporary only and the use of land will be unaffected once the works have finished.

### **Outstanding Objections**

- 6.71 Since the Application was submitted, the Applicant has concluded two option agreements with the entities comprising the Oakendene Estate – Langlands-Pearse and Others **[RR-010 and RR- 278]**. The Landowner has informed the Applicant that the representation is to be withdrawn and the Applicant is awaiting confirmation of this. The Applicant summarises the position with the other remaining Affected Parties who have made representations below.
- 6.72 **Ancleggan Limited [RR-012] and Charles Roderick Worsley [RR-59], Land Engagement Reports 4.6.11 and 4.6.19**
- 6.73 Ancleggan Limited entered into an option agreement in December 2021 over land owned by Mr Worsley in the knowledge of the existence of the Applicant's plans for the Proposed Development and its anticipated land requirements. Mr Worsley owns a wider area of pasture land and is also one of the shareholders of Ancleggan Limited. The Land Interest has submitted a planning application for a battery energy storage scheme in March 2023, which, if consented, is proposed to connect to the National Grid at Bolney in 2031, 5 years later than the Applicant's grid connection offer date of 2026. The local planning authority is yet to determine the planning application or issue any recommendation for approval or rejection of the application.
- 6.74 As explained in the Applicant's Land Engagement Report – Ancleggan **[4.6.11]**, the Applicant has been in active engagement with the Land Interest with a view to seeking to limit the degree of conflict between the two development proposals, and it will continue to do so. This has resulted in substantial reduction to the area of the Ancleggan Option Land within Order Limits following the Second Statutory Consultation and confirmation of substation site choice, and a further, more limited reduction as part of the Change Request **[AS-046]**. The Applicant has also agreed to limit the general cable construction corridor in this location to 30m. However, there are environmental constraints and significant physical constraints in the area, including buried services in the gap between Bolney substation and the existing Rampion 1 substation, and in the Bolney Extension land, which mean that the Applicant cannot further refine its route until detailed design for its Grid connection has been progressed in conjunction with National Grid. The Ancleggan scheme design proposes to locate the battery storage scheme substation on the land through which the Applicant's cable infrastructure must be installed. The

Applicant understands that it would be possible for Ancleggan Limited to revise its proposed scheme layout in a manner which would enable both proposals to proceed were Ancleggan Limited to secure planning permission, particularly as the Proposed Development will be delivered in advance of the Ancleggan scheme.

- 6.75 There is at present no certainty that the Ancleggan scheme will secure planning permission, that funding is in place to deliver it, or that it has secured any other necessary consents that it may require. The weight to be applied to those proposals is very limited when weighed against the significant public benefits that will be delivered by the Proposed Development.
- 6.76 Mr Worsley makes many of the same representations as Ancleggan Limited, given his shareholding in that company and his interest in the proposed battery energy storage scheme. In addition, he raises concerns about impacts upon his current ability to farm and access land. In this respect, it is the Applicant's understanding that Mr Worsley's land is not currently farmed for arable or grazing purposes but is subject to low level vegetation management. Insofar as that use is impacted by the cable construction corridor and results in crop losses, these will be compensatable under the principles of the Compulsory Purchase Compensation Code.
- 6.77 The outstanding matters preventing the progression of negotiations for a voluntary agreement are centred on the current design conflict between the Applicant's scheme and the One Planet/Ancleggan scheme. Design refinements by both parties are required in order to reach a voluntary agreement. Discussions are anticipated to continue between the Applicant, Mr Worsley and Ancleggan Ltd to establish an agreed option plan after the interim cable design work in September 2024.
- 6.78 **John O'Rourke [RR-177], Land Engagement Report 4.6.21**
- 6.79 The Land Interest objects to the amount of their land included in the Order Limits for the onshore connection works (Work no. 19) to Bolney. As explained in relation to the Ancleggan/Worsley land above, the constraints in this area and the need to settle the detailed design of the connection to Bolney with National Grid mean that Applicant necessarily requires flexibility in the location to ensure that it can connect the Proposed Development to the National Grid. The Applicant understands the land interest has an option in place with a grid stability developer, albeit there is no planning permission. The Applicant has had numerous site meetings and online Teams meetings with the Land Interest between 2021 and 2024 to engage and reach a suitable agreement. However, the Applicant cannot commit to reducing the Order Limits in this location at this point in time. It is anticipated that further sharing of information between the parties could result in a mutually acceptable arrangement for both developments. This will be progressed further after the interim cable design work in September 2024.
- 6.80 **Green Properties (Kent & Sussex) Limited [RR-138], Land Engagement Report [4.6.19]**
- 6.81 The Land Interest owns pasture land which is affected by the proposed cable route, and land which is affected by construction and operational accesses. The Applicant has considered and assessed in excess of 10 different route, access and/ or construction method proposals resulting from discussions with Mr Dickson, who is the owner of Green Properties (Kent and Sussex) Limited, the conclusions of which have been communicated to Mr Dickson in a number of letters as explained in **[REP1-017] and [REP2-028]**. The Applicant's consideration of alternative



proposals has continued throughout the Examination, during which the Land Interest proposed yet further iterations of alternative options. The Applicant's CAH1 Post Hearing Submission (Agenda Item 10a) [**REP4-073**] further explains the Applicant's rationale for the Order Limits in this location.

- 6.82 The Land Interest's relevant representations do not raise concerns about impacts on farming operations but focus upon recently planted saplings which were planted in full knowledge of the Applicant's land requirements. Whilst assertions were made in the Land Interest's Written Representations about a loss of productive land and income, this point was not particularised and it is not clear if cattle are in fact still grazed on the land. Furthermore, as noted by the Applicant in Paragraph 2.11.4 of [**Table 2-11 of REP2-028**], the Land Interest sought to sell the land in July 2023, marketed as 'Land with Strategic Potential', therefore calling into question the Land Interest's intention to continue farming the land.
- 6.83 With regards the saplings, as explained in its submissions [**Table L173 of REP1-017**] and [**Table 2-11 of REP2-028**], the Applicant sought details of the proposed planting scheme before it was implemented in order to ascertain the impacts and whether it could be accommodated through routing and detailed design. The Land Interest declined to provide these details and the Applicant was only provided with details of the scheme during the examination after the planting had been undertaken. Notwithstanding, as explained in **Table 2-23 of REP5-122**, the Applicant has given a binding commitment to a trenchless crossing extension, which has been included in the Crossing Schedule at Appendix A to the Outline CoCP [**AS-043**]
- 6.84 The Land Interest has been critical of the Applicant's attempts to engage in negotiations and has made allegations about conduct which are wholly unfounded. The Applicant has made extensive attempts to discuss voluntary agreement with the Land Interest, as detailed in The Applicant's Land Engagement Report – Green Properties (Kent & Sussex) Ltd [**4.6.2**] but these were initially re-buffed and were further hampered by the Land Interest's unwillingness to accept the engineering and environmental rationale for the Applicant's route selections, and by the multiple changes in land agents who have represented the Land Interest since engagement commenced in 2020. Constructive engagement has taken place in recent months since the Land Interest instructed Montagu Evans, albeit neither the Land Interest nor the Land Interest's agent have responded to the Applicant's latest Revised Heads of Terms and accompanying plan, showing the proposed extended trenchless crossing, which were presented to the Land Interest and the Land Interest's agent on 8<sup>th</sup> July 2024. Whilst agreement has yet to be reached on all terms, the Applicant remains committed to progressing discussions and it is hoped that it will be in a position to report to the Secretary of State that a binding agreement has been concluded with the Land Interest.
- 6.85 The Land Interest seeks a change to the Order to exclude its land. This is not justified- the exclusion of this land, which is required for the onshore cable route, would fundamentally prejudice the Applicant's ability to deliver the Proposed Development. The Land Interest's Deadline 5 Submissions also criticise the Applicant for not progressing a change request to the Order for an alternative route, but do not identify what route it is now seeking, nor provide any justification for it, nor indicate whether the Land Interest would be willing to conclude a binding agreement for the land rights required. The extended trenchless crossing, which is now secured by the Order, does not require a change request, and in the Applicant's view there are no alternatives to compulsory acquisition which should be preferred to the Order.

- 6.86 It remains the Applicant's position that there is a compelling case in the public interest for the compulsory acquisition powers sought over the Land Interest's land. Contrary to the Land Interest's assertions, the Applicant has given extensive consideration of alternative options in respect of the Land Interest's property and has conducted meaningful negotiations. It has given a binding commitment to an extended trenchless crossing under the saplings, and provided updated Key Terms and a plan, to which it awaits a response. The Land Interest will experience temporary disruption to the use of the land during construction, but the majority of the saplings will be avoided, and, insofar as there are cattle grazing the land, the Applicant has committed to implement appropriate mitigation measures. The Land Interest will also be entitled to compensation for compensatable losses. It is clear that the extensive benefits of the Proposed Developments far outweigh the limited impacts on the Land Interest's use of this land.
- 6.87 **Thomas Ralph Dickson [RR-396], Land Engagement Report 4.6.6**
- 6.88 The Land Interest owns pasture land which is affected by the proposed cable route. It has historically been used for grazing cattle but the Applicant is not aware that the land is currently in use for that purpose. The Proposed Development also affects the Land Interest's driveway which provides access to his residential property. The Land Interests' objections to compulsory acquisition principally relate to: the Applicant's consideration of alternative route options; the particular impact that the proposed construction corridor may have on the Land Interest as a result of his protected characteristics under the Equality Act 2010; and the adequacy of the Applicant's attempts to negotiate voluntary terms.
- 6.89 The Applicant has repeatedly sought confirmation of the measures which the Land Interest reasonably seeks as mitigation measures. It is understood that the Land Interest objects to the need to utilise crossings over the cable construction corridor when moving cattle, but it has not been explained why the mitigation measures proposed by the Applicant, including the support of a stockperson to assist in moving cattle, are not appropriate, or why there is a particular impact on the Land Interest due to his protected characteristics. The measures proposed by the Applicant have been rejected by the Land Interest but the Applicant remains of the view that they will provide effective mitigation. The Applicant has responded to these points in more detail in the Applicant's Comments on Deadline 3 Submissions (CONFIDENTIAL) - Mr Dickson **[REP4-080]**.
- 6.90 With regards alternative routes and iterations of routes, accesses and/or construction methods, the Applicant has assessed approximately 5 different alternatives, the conclusions of which have been communicated to Mr Dickson as explained in **[REP1-017]** and **[REP2-028]**. The Applicant's consideration of alternative proposals has continued throughout the Examination, during which the Land Interest proposed yet further iterations of alternative options. The Applicant provided a detailed response to what it understands is the Land Interest's current preferred option ("Alternative 3") in its response to CAH1 Action 13 **[REP4-074]**. Discussions between the parties have since continued, and whilst it is still not possible to adopt the Land Interest's Alternative 3, as further explained in the Applicant's Response to the Land Interest's Deadline 5 Submissions, the Applicant has proposed an alternative version which would be located further north than the present alignment, requiring an amendment to the Order Limits. It is not currently possible for the Applicant to commit to this option without undertaking further assessment work and consultation if necessary, including with a neighbouring landowner towards whose property the cable route would move closer. Subject to the outcome of that work, the Applicant would also need to consider the most appropriate means of consenting any such alternative to the Proposed Development.

- 6.91 The Land Interest, in its Deadline 4 representations, has called for a change to the Order, for an as yet unspecified 'final alternative route'. As it stands, the Land Interest has not presented a 'final alternative route' to the Applicant, nor committed to a binding agreement in relation to the land rights required for 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 of the Applicant's assessment by felling trees which were originally identified by the Applicant as a constraint to taking route alignments forward. This changing of the Land Interest's 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.
- 6.92 Notwithstanding, the Applicant remains committed to exploring the potential alternative option and has proposed a strategy for moving forwards to which it is awaiting agreement from the Land Interest. In the circumstances, it remains necessary for the Applicant to seek the powers of compulsory acquisition in the Order to ensure the Proposed Development can be delivered. There is not currently a reasonable deliverable alternative to compulsory acquisition which should be preferred over the Applicant's proposals and the Land Interest has not presented any evidence to the contrary. If compulsory acquisition powers are not granted for the land at College Wood farm, there will be a material risk to the delivery of the Proposed Development.
- 6.93 As with Green Properties referred to above, the Land Interest has been critical of the Applicant's attempts to engage in negotiations and has made allegations about conduct which are wholly unfounded. The Applicant has made extensive attempts to discuss voluntary agreement with the Land Interest, as detailed in The Applicant's Land Engagement Report – Dickson [4.6.6] but these were initially rebuffed by the Land Interest and were further hampered by the multiple changes in land agents who have represented the Land Interest since engagement commenced in 2020. Constructive engagement has taken place in recent months since the Land Interest instructed Montagu Evans, including in relation to the potential alternative referred to above.
- 6.94 It remains the Applicant's position that there is a compelling case in the public interest for the compulsory acquisition powers sought over the Land Interest's land. Contrary to the Land Interest's assertions, the Applicant has given extensive consideration of alternative options in respect of the Land Interest's property and has conducted meaningful negotiations. The Land Interest will experience temporary disruption to the use of the land during construction but insofar as the Land Interest does intend to graze cattle on the land, the Applicant has committed to implement appropriate mitigation measures. The Land Interest will also be entitled to compensation for compensatable losses. The Applicant submits that the extensive benefits of the Proposed Development far outweigh the impacts on the Land Interest's use of this land.
- 6.95 **The Baird Farming Partnership [RR-387], Land Engagement Report 4.6.36**
- 6.96 The Land Interest owns arable land affected by the Proposed Development, including land in the landfall area. The Land Interest has a number of development aspirations and has raised concerns about the potential impacts upon these.
- 6.97 The Weald to Waves nature conservation scheme, for which the Land Interest's aspirations include marketing the land for BNG opportunities. The Applicant has been in discussion with the Land Interest in this regard and is of the view that the

respective proposals are compatible given that the majority of habitats other than woodland are safe to be established over the cable corridor.

- 6.98 The Littlehampton Economic Growth Area. This is a strategic housing development site for which the Land Interest is seeking to secure agreement with developers. As explained in **Table LI92 of REP1-017**, the Applicant revised the cable route prior to submission of the Application to mitigate the impact on the LEGA. Only indicative drawings are available for the LEGA but these designs indicate that the remaining area of the LEGA which overlaps with the cable route is likely to be used for open space/recreational use, which could be entirely compatible with the existence of the buried cable. Accordingly, the Proposed Development would not prejudice the LEGA from being brought forward.
- 6.99 A proposed housing development for the land required for a temporary compound. **REP1-017** explains the alternative options which have been considered by the Applicant for the compound and the reasons for rejecting them. The Land Interest has not sought to make a planning application for housing development in this location, nor is the land allocated in the local plan or currently included in the emerging Local Plan for development. There are no proposals to weigh against the benefits of the Proposed Development, and in the event that these were to come forward in future, this is likely to be after the construction of the Proposed Development has completed, at which stage the land will be available for use.
- 6.100 Concerns have been raised about the impact on land drains, in respect of which the Applicant has given a commitment C-28 in the Commitments Register [**REP5-086**] regarding the reinstatement of agricultural land drains. The Land Interest has also raised detailed comments on the proposed voluntary agreement terms, to which the Applicant responded on 24 May 2024 as per the Applicant's response to Action 7 from the CAH1 [**REP4-074**]. Agreement has yet to be reached but the Applicant remains committed to progressing this with the Land Interest.
- 6.101 **R J Goring, R H Goring, P Goring, Wiston Estate Partnership [RR-307], Land Engagement Report 4.6.8**
- 6.102 The Land Interest owns land which is affected by circa 3.9km of the proposed cable route. The land within Order Limits is principally arable and pasture land, for which there are 3 main tenants. The Land Interest's property is also affected by temporary construction areas and accesses, and operational access rights. Detailed written submissions have been made by the Land Interest which principally relate to: alternative route options; potential mineral sterilisation; impacts upon a potential future expansion of the Land Interest's vineyard business; and the adequacy of the Applicant's attempts to engage in private treaty discussions.
- 6.103 With regards to alternative options, the Applicant has responded in detail to the multiple routes and iterations of routes proposed by the Wiston Estate [**Table LI89 of REP1-017, Table 2-28 of [REP2-028], Table 2-31 of REP4-070], Table 2-30 and 2-31 of REP5-122**]. The Applicant does not rehearse the detail here but there are clear engineering, technological, environmental and/or land use reasons as to why the alternatives proposed by the Wiston Estate cannot be taken forward, do not represent reasonably deliverable alternatives to compulsory acquisition, and should not be preferred to the Applicant's Proposed Development. In contrast, the Land Interest makes unsubstantiated assertions about the ability to deal with significant constraints which would be encountered by the Wiston Estate's alternative proposals, such as (but not limited to): the requirement to cross a high pressure gas main; interaction with ancient woodland (which the Applicant's mitigation hierarchy seeks to avoid); the use of the South Downs Way

as a construction access; additional length of works within the South Downs National Park; routing through Archaeological Notification Areas; impacts on the Chanctonbury Hill SSSI; impacts on common land; and impacts on other land uses including residential properties and a school.

- 6.104 Insofar as the Land Interest proposes that the Applicant should have selected an alternative grid connection at Ninfield, the Applicant has explained [CAH1 Actions **[REP4-074]** and **Table 2-30 of [REP5-122]**] why that was not an available option, and moreover, why it would have required a significantly longer offshore export report which would present significant technological risk and would result in disproportionately higher project costs.
- 6.105 The Applicant addresses its consideration of the impact of crossing the minerals safeguarded area, and compliance with policy in paragraphs 7.7 and 7.8 below of these submissions. There are differences between the parties over the precise volume of minerals which may be affected – see **[REP5-122]** – but it remains the case that the Proposed Development provides a route which is deliverable, 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.
- 6.106 Furthermore, it is not accepted by the Applicant that there will be permanent sterilisation of minerals resources. The Proposed Development has an anticipated 30-year life-span, and once it has been decommissioned, the buried cables across the Land Interest's land will no longer be 'live' and will be capable of removal. The Applicant has given commitments to all Affected Parties in its CMS **[REP5-088]** to seek appropriate mechanisms for the release of land rights that have become surplus, and it is willing to discuss bespoke commitments with the Wiston Estate as part of the negotiations for a voluntary agreement. Any impact upon the Land Interest's ability to exploit the minerals is therefore in the short to medium term only and will not affect the Land Interest's desire to protect the minerals resource for future generations. It should also be noted that there is no minerals policy allocation for the extraction of minerals in this location, no planning application for the same, no plans have been presented by the Land Interest as evidence of an intention to seek consent for minerals extraction in this location, and the Land Interest already extracts minerals at Rock Common Quarry. Accordingly, and given the time-limited nature of the physical constraint on extraction posed by the Proposed Development, the public benefits of the Proposed Development far outweigh any impact on the Land Interest insofar as potential future minerals extraction is concerned.
- 6.107 The Applicant's Order Limits deliberately avoid the Land Interest's existing vineyards which extend to circa 30 acres of the 6,000 acre Wiston Estate. It is asserted by the Land Interest that it has plans to expand its vineyard operations and it is submitted a Knight Frank report which assesses circa 180 acres of land as suitable for this purpose circa 3km to the north of the existing vineyards. No substantive plans for the vineyard expansion are presented, nor any information to confirm that this is a viable proposition or when it may come forward, nor any explanation as to whether the Land Interest has considered the suitability of other land within the Wiston Estate for this purpose. As explained by the Applicant in paragraph 2.31.47 of Table 2-31 of **[REP5-122]**, only a very small proportion of the area identified as potentially suitable for vines in the Knight Frank Report could potentially be affected by the Proposed Development (4% during construction and 2% for the permanent easement). In the circumstances, very little weight can be placed on the Land Interest's tentative vineyard expansion proposals when weighing the same against the significant public benefits that will be delivered by the Proposed Development.

- 6.108 The Land Interest's criticisms of the Applicant's attempts to engage in negotiations are misleading and do not take account of the very extensive engagement that has taken place, as detailed in the Land Engagement Report – Wiston [**REP5-020**], both before the Application was submitted, and subsequently during the Examination. There has been constructive engagement on detailed aspects of the Key Terms and legal documentation, including on the Applicant's financial offer. The principal outstanding issue relates to the compensation for the Land Interest's potential claim for the temporary sterilisation of minerals, on which the Applicant is taking specialist valuation advice, and which is not in any event a matter for the Examination.
- 6.109 **Susie Clare Fischel [RR-378], Land Engagement Report 4.6.7**
- 6.110 The Land Interest owns pasture land which is affected by the cable route, and also by proposed operational and construction accesses. The Applicant understands that the land is currently used for private nature conservation purposes and it is not actively farmed. Detailed submissions have been made by or on behalf of the Land Interest, which relate to: a request to route the cable as far south as possible to minimise temporary severance of land during construction; the proximity of the Proposed Development to Ancient Semi-Natural Woodland; and criticisms about the Applicant's attempts to negotiate land rights by agreement. The Applicant has since revised the Order Limits in this location to avoid encroachment into the ancient woodland buffer as part of the Change Request [**AS-046**].
- 6.111 With regards to routeing and temporary land severance, the Applicant considered 4 alternative options in respect of the Land Interest's property and had understood that the Order Limits as applied for represented the Land Interest's preferred alternative (see **Table 2-30 of REP4-070**). The Landowner has since expressed a preference for a route to exit their land on the eastern boundary (Option B), or to follow the alignment of Spithandle Lane. The Applicant has provided clear reasons as to why these options could not be adopted in its letters to the Land Interest dated 19 July 2022 and 17 October 2023 (appended to **REP1-017**), and in its responses to the Land Interest's representations **Table 2-26 of REP2-028**. The Land Interest has not demonstrated why these options should be preferred over the Applicant's proposal.
- 6.112 The Applicant has agreed to site the cable as far south and east as possible within the Order Limits and acknowledges that there will be some temporary severance to the south-eastern corner of the field during construction and it will discuss suitable crossing points as part of the detailed design to maintain access to that land should access be necessary to maintain its environmental use. There will be no impact on that use once construction has completed. The Applicant submits that the substantial benefits of the Proposed Development far outweigh the limited temporary impact on the Land Interest's field.
- 6.113 With regards negotiations, the Land Interest misrepresents the position. The Applicant has provided details of its engagement with the Land Interest in the Land Engagement Report [**REP5-019**]. This engagement has taken place over many years, dating back to before the submission of the Application, but was hindered by a lack of feedback from the Land Interest's agent on the proposed heads of terms. Greater progress has been made in recent months with constructive discussions taking place directly between the Applicant and the Land Interest. Solicitors for both parties have now been engaged and draft documentation is in circulation. The Applicant anticipates concluding an agreement with the Land Interest in the near future and it will update the Secretary of State at the appropriate time.

- 6.114 **Alan David Lewhellin Griffiths and Janice Elizabeth Griffiths [RR-003], Land Engagement Report 4.6.15**
- 6.115 The Land Interests own and operate a dairy farm and pasture land which is affected by the proposed cable route, together with land required for construction and operational access. The Land Interests also have a number of holiday lets and informal camping areas, including a shepherd's hut, all of which are situated outside of the Order Limits. The lawful planning use of the shepherd's hut and wild camping site is currently unclear (see Table 2-1 of the Applicant's Response to Affected Parties' Written Representations [**REP2-028**]).
- 6.116 The Applicant's route was amended following consultation with the Land Interests so as to avoid a proposed slurry pit to be constructed by the Land Interests, and to employ a trenchless crossing under the main farm access track so as to mitigate impacts on the dairy farm during construction. It was also necessary to revise the route to facilitate an appropriate crossing of a Southern Gas Networks pipeline in this location.
- 6.117 The Applicant acknowledges that there is likely to be temporary disruption to the dairy farm operations during construction. The ALLO will engage with the Land Interests to agree appropriate mitigation measures and accommodation works as the detailed design progresses, and in the event that the impacts of the Proposed Development during construction cannot be fully mitigated the Land Interests will be able to claim compensation in accordance with compulsory purchase compensation code principles. Following completion of construction there will be no operational impacts upon the dairy farm or other land uses. Limited discussion has taken place to date on the commercial terms, given the Land Interests' focus on matters relating to routeing and mitigation, however, there has recently been detailed discussions on construction works, programme, and potential compensation directly between the Applicant and the Land Interests. The latest detailed construction information has been provided to the Land Interests and revised heads of terms sent together with updated detailed precedent documents having taken on board comments from the Land Interests' land agent. The Applicant awaits further comments back from the Land Interests' agent in order to progress matters. In the absence of agreement there remains a compelling case in the public interest for the compulsory acquisition powers sought by the Applicant.
- 6.118 **Maria Natale Hacon [RR-215], Maria Teresa Natale [RR-001], Maria Teresa Camilleri [RR-216], Gina Perella Lewis [RR-132], Land Engagement Report 4.6.84**
- 6.119 These Land Interests are trustees of a trust that owns pasture land which is affected by the proposed cable route. Their primary objection does not relate to the impact of the Proposed Development on the existing use of the land but to impacts upon the ability to develop the land for housing. As explained in Table LI34 of [**REP1-017**], the land is not designated in the Local Plan for development, nor is it currently proposed to be so designated. The Land Interests requested a realignment of the cable route to the southern-most boundary of the property, but this could not be accommodated due to the impacts on a Flood Risk Zone 2, the proposed Lyminster Bypass, and on other neighbouring land interests. The Applicant has asked for information on the proposals, including an indicative masterplan. It has also offered to locate the construction corridor as far south as possible to minimise potential impact in the event a scheme ever comes forward. Given the speculative nature of the development proposals, the Applicant submits that no weight can be placed on the Land Interests' development proposals when weighed against the considerable public benefits of the Proposed Development.

- 6.120 **Angmering Park Farms LLP and the Angmering Park Estate Trust [RR-022], His Grace Edward William Fitzalan-Howard, 18<sup>th</sup> Duke of Norfolk [RR-145], the Personal Executors of Lady Sarah Margaret Clutton [RR-391], Trustees of the 16<sup>th</sup> Duke of Norfolk's 1958 Reserve Fund [RR-404], Land Engagement Report 4.6.86**
- 6.121 The Land Interests make representations regarding engagement by the Applicant and the potential of the route to threaten a conservation project known as the Peppering Project. The Applicant explains in **Table LI66 of [REP1-017]** the extensive engagement and consultation which took place with the Land Interests, particularly with regards the alternative routes through the estate that were consulted upon and assessed, leading to the adoption of a route that avoided the Peppering Project and had lesser environmental and land use impacts on the estate. This is further explained in Chapter 3: Alternatives, Volume 2 of the ES **[APP-044]**. Furthermore, as explained in the Applicant's Land Engagement Report – Angmering & Norfolk Estate **[4.6.86]** there have been lengthy negotiations between the parties in respect of a voluntary land agreement. An impasse has been reached on the present discussions until ground investigation works have been undertaken to determine the precise route of the cable down Michelgrove Bank. The Applicant has provided detailed explanations to the Land Interests, and in its submissions [CAH1 Actions **REP4-074**] as to why this route cannot yet be determined so as to enable the discussions to progress further. The Land Interests representations that there hasn't been effective engagement are therefore without foundation and there is a compelling case in the public interest for the compulsory acquisition powers sought by the Applicant.
- 6.122 **Mr Charles How [RR-255], Land Engagement Report 4.6.96**
- 6.123 The Land Interest is a tenant farmer (Agricultural Holdings Act tenant) of pasture land that is affected by the proposed cable route. The ALLO will liaise with the Land Interest regarding the detailed mitigation measures that may be required to mitigate disruption to the Land Interest's agricultural operations, in accordance with the commitments in the CoCP **[AS- 043]**. On 18 July 2024, the Applicant facilitated a meeting between the Land Interest and an ALLO from another comparable linear buried cable project. The purpose of this visit was for the ALLO to explain practical matters including: the practical steps the project takes to minimise disturbance to farming the rest of the land; how crossing points are designed/ managed; how the project manages the water during construction including pre and post construction drainage designs; and Reinstatement methodologies of the land post construction. With regards negotiations, as explained in the Land Acquisition Strategy **[REP5-130]** negotiations in respect of land rights for tenant's land interests will need to be informed by the negotiations with the relevant landowner, and the nature of the tenant's tenancy. In most cases, a tenant consent form will be required rather than requiring the tenant to enter into the option agreement with the landowner.
- 6.124 **Simon Kilham [REP1-153], Land Engagement Report 4.6.5**
- 6.125 The Land Interest is a tenant farmer (Farm Business Tenant) on the Wiston Estate and it is understood that he has a Farm Business Tenancy of Guessgate Farm. The Applicant has requested a copy of that FBT because it is necessary to establish the area the subject of the tenancy, its term, the appropriate means of securing tenant consent for the land rights sought, and the likely impacts of the Proposed Development on the same. This has not been supplied despite repeated requests by the Applicant. The ALLO will liaise with the Land Interest regarding the detailed mitigation measures that may be required to mitigate disruption to the Land Interest's agricultural operations, in accordance with the commitments in the CoCP



**[AS- 043]**. As explained in paragraph 2.26.2 of Table 2-26 of **[REPS-122]**, the Applicant offered to facilitate a meeting on 18 July 2024 between the Land Interest and the ALLO from another project who could provide a practical explanation of the likely impacts of the works and steps that could be taken to mitigate them in practice, based on comparable experience from other linear buried cable projects. The Land Interest's agent was on holiday therefore the Applicant has proposed to re-schedule the ALLO meeting for 7 August 2024 and is awaiting confirmation from the Land Interest.

6.126 **Climping Homes [RR-074], Land Engagement Report 4.6.25**

6.127 The Land Interest owns arable and which is proposed to be used for a temporary construction access. The Land Interest is promoting a residential development scheme, including a new road and roundabout to which the Applicant's temporary access will need to connect. The parties are collaborating on their respective requirements and it is expected that a simple form of voluntary agreement will be entered into to ensure both parties' schemes can co-exist together.

6.128 **Mr Mark Cleaver and Mrs Karen Cleaver [RR-257], Land Engagement Report 4.6.87**

6.129 The Land Interests have raised concerns about the impact of the Proposed Development on Washington Caravan and Camping Park which they own and operate. The campsite is affected by the proposed cable route but it will be unaffected during construction as a trenchless crossing will be used in this location. The Land Interests may suffer compensatable losses as a result of the works. Concern has also been raised about the potential impact on a proposed garage extension to a recently constructed dwelling however the planning permission for that development does not conflict with the Order Limits. The Land Interests appointed a new agent in May 2024 and discussions have moved positively since then. The Applicant has discussed the Heads of Terms at length with the Land Interests' agent, with outstanding issues including requests for details on the mitigation measures at the adjacent construction compound site and clarification on the proposed lighting on site. The Land Interests' agent has confirmed that the landowner has no concerns regarding the Heads of Terms but does not want to sign until further design information can be provided. At an online meeting on 31 July 2024, the Land Interests' agent confirmed that a voluntary agreement will be achievable in due course, once some further clarity has been provided regarding the details of the construction compound.

6.130 **Mssrs Hutchings [RR-259], Land Engagement Report 4.6.30**

6.131 The Land Interests' pasture land and pedigree beef cattle business will be affected by the Proposed Development during construction, giving rise to expected compensatable losses, and the need to implement suitable mitigation and crossing measures. The Land Interest also has aspirations to extend an existing solar farm, which, were that to proceed, could conflict with the Proposed Development. No planning application has been made for the solar farm extension proposal therefore the likelihood of this scheme going ahead is unknown and little weight can be placed upon it at present. Furthermore, the Land Interest's agent has informed the Applicant that the proposed grid connection for the solar farm, were it to proceed, would not be before 2026, and therefore its construction is unlikely to conflict with the Proposed Development. The Applicant will engage constructively with the Land Interest on the appropriate co-ordination of the respective schemes should the Land Interest's scheme come forward. The Land Interest also has aspirations to develop part of the farmyard for housing but this land is outside of the Order Limits and there are no known areas of potential

conflict. The Land Interest's representation also raises points regarding the detailed terms of the proposed easement. The Applicant will continue to negotiate with the Land Interest as to seek to resolve the outstanding issues as detailed in The Applicant's Landowner Engagement Report – Hutchings [4.6.30].

6.132 **Muntham Farm LLP [RR-260], Land Engagement Report 4.6.31**

6.133 The Land Interest owns pasture land which is affected by the cable construction corridor but has also raised concerns regarding the equestrian business and a clay pigeon shoot which are operated by third parties on the land, and a shoot which the Land Interest manages in hand. As explained by the Applicant in **Table L183 to REP1-017**, the equestrian and shooting business are not within Order Limits. The Applicant had taken account of consultation feedback from the Land Interest and revised the original route to avoid the gun club and minimise the impact on the farm where possible. The access to the livery yard and the gun club will intersect with a proposed construction access, but access will be managed and maintained by the Applicant in accordance with the commitments in the CoCP [AS-043]. The Land Interest has recently signed Key Terms with the Applicant for an Option Agreement for an Easement and solicitors are in the process of being instructed.

6.134 **South Coast Nursing Homes Ltd [RR-357], Land Engagement Report 4.6.89**

6.135 The Land Interest has signed Heads of Terms in relation to the Applicant's proposed use of its driveway as an operational access, however it has not yet withdrawn its representation. The Applicant understands that the Land Interest will do so when the Option Agreement for the access has concluded.

6.136 **Washington Recreation Ground Charity [RR- 414] and Washington Parish Council [RR -413], Land Engagement Report 4.6.40**

6.137 The Applicant understands that the Charity manages the use of the recreation ground and the allotments but it is not clear whether it has an interest in land. The Applicant has confirmed to Washington Parish Council (the owner of the land and a trustee of the Charity) that the use of the land during construction and operation of the Proposed Development will be unaffected because the cable will be laid by trenchless crossing techniques. Neither the Charity nor the Parish Council have raised any express objection to the proposed works or rights affecting the recreation ground and allotments. The Parish Council has however made representations regarding route selection more generally, to which the Applicant has responded. The latest response to the routes proposed by the Parish Council is set out in the Applicant's response to the Wiston Estate submissions in [REP4-70] and [REP5-122]. The Applicant understands that the land interest has recently appointed a new land agent at Savills, however the Applicant is yet to receive any feedback from the Land Interests agent on the draft Heads of Terms, despite numerous chasing attempts. The latest correspondence is an email from the agent (on 25 July 2024) requesting an undertaking for costs. The Applicant is arranging this to enable to further discussions.

6.138 **Other Persons with Paddock, Arable or Pasture Land Affected by the Proposed Development**

6.139 A number of persons have made representations in respect of the impact of the proposed cable route land which is currently used for equestrian, arable or grazing persons. The Applicant acknowledges that the Proposed Development will give rise to temporary impacts upon the use of the land during construction but thereafter

the land will be reinstated and available for its existing use. None of the business uses will be extinguished and the Proposed Development will not give rise to any permanent impacts on the land uses.

- 6.140 There will be impacts during the construction period and the ALLO will engage with the Land Interest to agree appropriate mitigation measures and accommodation works as the detailed design progresses. In the event that the impacts of the Proposed Development during construction cannot be fully mitigated the Land Interest will be able to claim compensation in accordance with compulsory purchase compensation code principles. In all cases, the impacts upon the Affected Person's property and private rights will be kept to a minimum (in accordance with the CoCP [AS-043] and the CMS [REP5-088]). The Applicant will also maintain access to the person's property during the works in accordance with the CoCP [AS-043]. There is a compelling case in the public interest for the compulsory acquisition powers sought by the Applicant. The Applicant addresses certain site specific matters that have been raised below and provides the latest position on negotiations with the relevant party.
- 6.141 **Tim Facer [RR-398], Land Engagement Report 4.6.13:-** The Land Interest, who owns pasture land, has made representations regarding the proposed route of the cable construction corridor across his farm. As explained in the Applicant's responses to Relevant Representations Table LI14 [REP1-017], the Applicant amended the route to move it further to the east of the farm and away from the residential property following consultation on the PEIR boundary, but as a result of environmental constraints it was not possible to accept the Land Interest's request to locate the route to the far eastern border of the farm. The Land Interest has also raised concerns about potential damage to a water main that serves his residential property, in respect of which the Applicant has provided a proposal to replace or protect the water main if it is affected by the proposed works. The Applicant received questions from the Land Interest's agent on 1 July 2024 in respect of the draft Option and Easement, to which the Applicant responded on 30 July and is awaiting a reply in order to progress towards an agreement.
- 6.142 **Graham Kittle [REP1-100], Land Engagement Report 4.6.53:-** The Land Interest owns a farm on and around Sullington Hill. Pasture and arable land is affected by the proposed cable route. The Land Interest has raised concerns about the width of the cable route in this location, the impact on his cattle herd, and potential impacts due to noise and visual impact on this holiday lettings and cafe business which are outside of the Order Limits. It is anticipated that there will be temporary disruption to the farming uses during the construction period which will give rise to compensatable losses. The Applicant has explained why there is particular flexibility in the Order Limits at Sullington Hill (see CAH1 Action 8 [REP4-074] given the ground constraints which give rise to specific construction challenges. Discussions have progressed well between the parties resulting in the Land Interest confirming agreement to the Key Terms on 1 August 2024.
- 6.143 **Nigel Allen Light [RR-273], Land Engagement Report 4.6.14:-** The Land interest owns pasture land which is affected by the cable route, together with a residential property and an associated private equestrian complex, both of which are outside of the Order Limits save in respect of the entrance to the driveway. There have been discussions between the parties in relation to heads of terms, construction impacts and mitigation measures. Although the Applicant has issued revised Heads of Terms there are a number of points still to be agreed. The Applicant will continue discussions and is hopeful a voluntary agreement can be reached.

- 6.144 **Nicola Crichton-Brown [RR-258], Land Engagement Report 4.6.10:-** The Land Interest owns arable and pasture land, and has principally raised concerns relating to the use of a small section of the driveway during construction. The Land Interest has sought an alternative construction access route which the Applicant was unable to take forward due to safety reasons. Constructive negotiations have taken place with the Land Interest, as detailed in the Landowner Engagement Report. The Applicant anticipates that an agreement will be concluded with the Land Interest.
- 6.145 **Paula Newman [RR-295], Land Engagement Report 4.6.20:-**The Land Interest owns pasture land, used for grazing, which is affected by the cable route, and also lives in a dwelling in close proximity to but outside of the Order Limits. Whilst the Applicant has sought to engage with the Land Interest, as explained in the Land Engagement Report, it is understood that the Land Interest does not currently wish to progress discussions.
- 6.146 **Kathryn Victoria Winfield [RR-188] Land Engagement Report 4.6.16:-**The Land Interest owns paddock land, used for grazing, part of which is expected to be affected by the proposed cable route during construction. Access to and use of the remaining paddocks will be unaffected. The future use and ownership of the property is currently unclear because the property is on the market for sale and has been for some time. The Land Interest has recently appointed a new agent and whilst there has been some engagement, the likelihood of reaching agreement is currently unknown.
- 6.147 **James Scott [RR-157] Land Engagement Report 4.6.78 - Artemis Aerospace:-** Mr Scott owns a driveway in connection with his residential dwelling, over which construction and operational access rights are sought. He is also the managing director of Artemis Aerospace Limited, which owns paddock land that is affected by the cable route. The paddock land will be temporarily cut off from the remaining land during construction, and therefore it will be necessary to arrange for suitable crossings in accordance with the CoCP [AS-043]. The Applicant is awaiting feedback on the Heads of Terms in order to progress discussions.
- 6.148 **Toby Chapman [RR-402], Claire Chapman [RR-070] Land Engagement Report 4.6.85):-**The Land Interests own pasture land, used for grazing, which will suffer temporary disruption during construction. In addition, the Land Interests have submitted a planning application for a new equine facility, in response to which the Applicant refined the cable route to ensure that the planning boundary for the equine facility is unaffected by the Order Limits. The Land Interests continue to have concerns about a perceived impact of the construction works on the equine facility and have not accepted the Applicant's financial offer. The likelihood of reaching a voluntary agreement with the Land Interests is currently unknown.
- 6.149 **Charles Robert Denys Arbuthnot [RR-058] Land Engagement Report 4.6.39:-**The Land Interest owns pasture land, used for grazing which used for grazing, which will suffer temporary disruption during construction. Concerns have also been raised by the Land Interest regarding impact upon a gas main, for which the Applicant will be required to take appropriate measures in accordance with the Protective Provisions in Part 5 of Schedule 10 of the DCO for Southern Gas Networks. The draft Option Agreement and Easement are currently understood to be with the Land Interest's solicitors for review. The Applicant is not aware of any outstanding issues.
- 6.150 **Stephen Christopher Turner [RR-362] Land Engagement Report 4.6.22:-**The Land Interest is affected by proposed construction access that affects a field

used for grazing. There will be limited impact upon the use of the land during construction. There have been a number of recent virtual meetings between the parties' land agents to discuss the heads of terms. The Applicant is awaiting further feedback from the Land Interest' land agent after he has had the opportunity to meet with his client.

- 6.151 **Christopher John Waller [RR-066] Land Engagement Report 4.6.23:-**The Land Interest owns pasture land, used for grazing and haylage, which will suffer temporary disruption during construction, including temporary land severance which will require suitable crossing arrangements. Heads of Terms were agreed in July 2024 and the Applicant awaits details of the Land Interest's solicitors to progress the legal documentation.
- 6.152 **Claudia Langmead Farming Limited [RR-073] Land Engagement Report 4.6.24:-**The Land Interest is affected by proposed construction access that affects pasture land. There will be limited impact upon the use of the land during construction. The Applicant has issued Revised Heads of Terms to the Land Interest and the Applicant anticipates that an agreement will be concluded with the Land Interest.
- 6.153 **Executors of D Bowerman [RR-119] Land Engagement Report 4.6.26:-** The Land Interest owns pasture land which will suffer temporary disruption during construction. The Land Interest's representation focusses principally on the detailed terms of the proposed easement. The Applicant has issued Revised Heads of Terms to the Land Interest and the Applicant anticipates that an agreement will be concluded with the Land Interest.
- 6.154 **Grant Talbot and Theresa Talbot [RR-137] Land Engagement Report 4.6.27 :-** The Land Interests have a haylage and equestrian business. The land used for haylage and pasture will be affected by the proposed development during construction, giving rise to expected compensatable losses, and suitable mitigation and crossing measures will need to be implemented. Concerns have been raised about the impact on land drains, in respect of which the Applicant has given a commitment C-28 in the Commitments Register [REP5-086] regarding the reinstatement of agricultural land drains. The Applicant and land interest have had detailed discussions on a number of specific points in the Heads of Terms and specific wording for equestrian fencing is required (owing to the presence of horses), the preferred location of crossing points. The Land Interest signed and returned this set of revised Heads of Terms on 8 July 2024.
- 6.155 **Mr and Mrs G Woolgar [RR-254], Land Engagement Report 4.6.28 -** one of the Land Interest's fields, which is used for grazing/equestrian purposes, will be affected temporarily by the proposed cable route. The Land Interest's representation focusses principally on the detailed terms of the proposed easement. The Applicant has issued Revised Heads of Terms to the Land Interest and the Applicant anticipates that an agreement will be concluded with the Land Interest.
- 6.156 **Mr D H Dumbrell, Mrs L Dumbrell and Mr R Dumbrell [RR-256], Land Engagement Report 4.6.29 -** The Land Interests' pasture land will be affected by the proposed development during construction, and suitable mitigation and crossing measures will need to be implemented. Concerns have been raised about the impact on land drains, in respect of which the Applicant has given a commitment C-28 in the Commitments Register [REP5-086] regarding the reinstatement of agricultural land drains. The Land Interests have recently signed Key Terms for an Option for an Easement, and the parties' solicitors will be instructed to progress the legal documentation.

- 6.157 **Patrick John Marcel Hutchinson [RR-289] Land Engagement Report 4.6.32** - The Land Interests' pasture land, which is grazed by horses, will be affected by the proposed development during construction, and suitable mitigation and crossing measures will need to be implemented. Concerns have been raised about the impact on land drains, in respect of which the Applicant has given a commitment C-28 in the Commitments Register [**REP5-086**] regarding the reinstatement of agricultural land drains. As explained in the Land Engagement Report, the primary point between the parties relates to the financial consideration offered.
- 6.158 **R G Nash & Sons [RR-306]: Land Engagement Report 4.6.34** - Pasture land for the Land Interests' mixed dairy, beef and arable farming business will be affected by the Proposed Development during construction, giving rise to expected compensatable losses, and the need to implement suitable mitigation and crossing measures. There are a number of dwellings and businesses located on the farm which are outside of the Order Limits but for which the main driveway will be subject to a construction and operational access, which will need to be managed and maintained during construction in accordance with the commitments in the CoCP [**AS-043**]. Concerns have also been raised about the impact on land drains, in respect of which the Applicant has given a commitment C-28 in the Commitments Register [**REP5-086**] regarding the reinstatement of agricultural land drains. Mitigation has been proposed in the form of suitable agricultural crossing points to ensure access into the remaining areas of the field and to ensure continued access to the dairy farm business and dwellings onsite. Mitigation of access issues relating to other parts of the farm are addressed in the construction management plan. Negotiations have progressed between the parties in respect of the Heads of Terms and the Applicant anticipates that an agreement will be concluded with the Land Interest.
- 6.159 **John James Goring [RR-421], Land Engagement Report 4.6.41:** The Land Interest owns farmland which is affected by the proposed corridor, in respect of which the Applicant has issued Heads of Terms and is awaiting feedback from the Land Interest. His relevant representation is made on behalf of Wiston Parish Council rather than in relation to compulsory acquisition powers sought over his own landholding, to which the Applicant responded in **Table 3-17 of REP1-017**.
- 6.160 **Tiffany Myatt-Wells [RR-397] Land Engagement Report 4.6.37 :-** The Land Interest owns pasture land which is used for grazing and which is affected by the proposed cable corridor. Whilst part of the land will be affected during the construction works, it forms part of a much larger field which will remain available for grazing use during construction once fencing has been erected. The impact on the Land Interest is expected to be relatively limited once mitigation measures have been implemented. The Applicant has agreed commercial Heads of Terms for a voluntary agreement with the Land Interest.
- 6.161 **J A Longhurst Ltd (Timothy Longhurst) [RR-400] Land Engagement Report 4.6.38:-** The Land Interest owns arable land which is affected by the Proposed Development, however the primary points in the representation concern the Land Interest's long-term development intentions for the land. As explained in **Table LI96 of REP1-017**, the Land Interest's land is not allocated for residential development in the Local Plan, but rather falls in part under a Biodiversity Opportunity Area designation which is not a development allocation. The Land Interest's proposals do not therefore carry any weight in the assessment of the compelling case in the public interest. Mitigation measures such as accommodation works are anticipated to minimise impacts on the Land Interest and the Applicant has offered to review a masterplan for the Land Interest's proposed development

in order to assess whether any further, bespoke mitigation proposals could be put forward.

### **Other Outstanding Objections**

- 6.162 **Suzy Smith Racing Limited [RR-382]** - The Land Interest raises concerns that paddock land will be affected by the proposed cable route. The Order Limits are in proximity to gallops used by the Land Interest's business, and a small area at the far end of the gallops over which she has a licence is affected by the cable route. The Applicant has established that no part of the paddock land, over which the Land Interest has leasehold interest, is within the Order Land, therefore there is no requirement for a land agreement with the Land Interest. The Applicant will continue to liaise with the Land Interest regarding the proposed works in accordance with the CoCP **[AS-43]**.
- 6.163 **West Sussex County Council [REP2-020] Land Engagement Report [4.6.52]**:- the Land Interest owns pasture land at Partridge Green which is affected by the cable route, together with various slivers of highway verges over which rights or temporary possession powers are sought. The Land Interest has not objected to compulsory acquisition. Heads of Terms were agreed on 19 July for the land at Partridge Green as explained in the Land Engagement Report.
- 6.164 There are a number of outstanding objections from persons with:
- 6.165 A potential subsoil interest in part width of an adopted highway as a result of adjoining land ownership (the ad medium filum rule):
- 6.165.1 Albon Family [RR-006], Sandra Albon [RR-339], Turok Family [RR-405], Frederik Turok [RR-125], Susan Turok [RR-376]; Ronald Alan Leggett [RR-328], Elizabeth Anne Leggett [RR-109], Jeremy Smethurst [RR-168], Meera Smethurst [RR-236], Henry Smethurst [RR-144];
- 6.166 Ownership of land required for a temporary access or visibility splay only:
- 6.166.1 Stonegate Group/Unique Pub Properties [RR-368], Land Engagement Report 4.6.12, Mark Renny [RR-324], Brookside Holiday Camp Limited [RR-050], Emily Mulcare-Ball [RR-113], Land Engagement Report 4.6.1;
- 6.167 Ownership of an access track or a category 2 interest relating to private rights of access that are affected by the Proposed Development:
- 6.167.1 Glenda Coralie Ayliffe **[RR-134]**, Rodger Hector Ayliffe **[RR-325]**, Richard Jonathan Clifford **[RR-311]**, Richard Napier Luce **[RR-314]**, Angela Lightburn **[RR-21]**, Paul Lightburn **[RR-293]**, Janine Creaye **[RR-164]**, Emily Thorpe **[RR-115]**, Julian Thorpe [RR-181] RAM2-GDPR001 **[RR-308]**, Andrew Porter **[RR-017]**, Joanne Higgins **[RR-170]**, Peter Christopher May **[RR-300]**, Land Engagement Report 4.6.33; Ruth Taylor **[RR-335]**, Land Engagement Report 4.6.35;
- 6.168 Ownership of a holiday home or caravan situated outside of the Order Limits:
- 6.168.1 Alec Lauder [RR-008], Hugh Miller [RR-150], Linsey Miller [RR-201], Lynette Regan [RR-210], Diane Ward [RR-097], Michael Stevens [RR-245], Alan Wayman [RR-302], Linda Saberi [RR-199], Andrew and Gillian Bridges [RR-014], Brian Conrad Whiting [RR-044], Martin Keogh [RR-229], Nicola Keogh [RR-271];

- 6.169 Land agents or other purported representatives whose representatives do not relate to a specified Affected Person:
- 6.169.1 Country Land and Business Association [REP1-176]; HJ Burt [REP1-103]
- 6.170 Many of those Affected Persons have principally made representations in relation to matters other than compulsory acquisition which are dealt with elsewhere in these submissions. Insofar as points are raised regarding compulsory acquisition, the Applicant relies upon its Responses to Relevant Representations [REP1-017], Responses to Affected Parties' Written Representations [REP2-028] and the respective Land Engagement Reports.
- 6.171 The Applicant notes that whilst Cowfold v Rampion [RR-084] comment upon a number of compulsory acquisition matters in their submissions, there is nothing to confirm that they are authorised to represent any Affected Parties on these matters. Accordingly, the Applicant does not address those points.
- 6.172 **Land owned by Statutory Undertakers**
- 6.173 It is proposed that pursuant to the powers in the dDCO the Applicant will acquire rights over land owned by statutory undertakers by the creation of new rights and imposition of restrictive covenants. A number of statutory undertakers have made a representation in objection to the proposed compulsory acquisition powers, and therefore the provisions of section 127(6)(a) of the 2008 Act are engaged. In each case, the Applicant considers that the statutory undertakers will not suffer serious detriment to the carrying on of their undertaking as a result of the compulsory acquisition of rights and/or restrictive covenants over their land and therefore the test set out in section 127(6)(a) of the 2008 Act is satisfied.
- 6.174 **TC Rampion OFTO Ltd [RR-384], Land Engagement Report 4.6.18**
- 6.175 The Land Interest owns Plot 34/24 which comprises grassland and hedgerow adjacent to the existing Rampion 1 substation. The Rampion 1 substation is outside of the Rampion 2 Order Limits. The Land Interest is the holder of an electricity transmission licence and has a leasehold interest in Plots 34/20, 34/21 and 34/22, immediately to the north of their freehold interest. It also has buried cables which connect into the existing Bolney Substation.
- 6.176 The Applicant requires an easement through the land in which the Land Interest has an interest. That land is not currently used or proposed to be used for the Rampion 1 substation operations and therefore the acquisition of the rights by the Applicant will not cause detriment to the Land Interest's undertaking. The Applicant also seeks a crossing agreement which will govern the crossing and protection of the Land Interest's apparatus.
- 6.177 The parties are engaged in detailed negotiations for the rights required by the Applicant and for protective measures for the Land Interest's assets. To date the parties have agreed a number of items relating to how relevant OFTO approvals will be secured, however they have been unable to reach agreement on commercial terms. The Land Interest has not asserted that the proposed acquisition of new rights and restrictive covenants will cause serious detriment to its undertaking, nor will it do so. The land is not in use for the Land Interest's undertaking, and its buried cables will be protected in accordance with the protective provisions for electricity undertakers in Part 1 of schedule 10 to the dDCO, as supplemented by the protective measures in the crossing agreement. The Applicant submits that the test in section 127 of the Planning Act 2008 is met.



- 6.178 **Network Rail Infrastructure Limited [RR-266], Land Engagement Report 4.6.17**
- 6.179 The Applicant's buried cable will need to be installed under the operational railway, and the Applicant necessarily requires land rights to enable it to install, retain, maintain and protect its infrastructure. This will be undertaken using trenchless crossing methods. The Applicant also requires operational access rights over land owned by Network Rail.
- 6.180 Whilst there has been some engagement between the parties in relation to a BAPA and Protective Provisions (see further **Section 8** below), the Applicant has only recently received substantive engagement from Network Rail on the terms of the proposed land agreement. Key Terms are partially agreed and the parties' solicitors are now engaged in drafting the legal agreement. The Applicant is in the process of concluding a Feasibility Basic Asset Protection Agreement (Feasibility BAPA) with Network Rail to progress technical discussions. The Applicant anticipates being able to update the Secretary of State to confirm that the documents have concluded.
- 6.181 In the current absence of agreement however, the Applicant must seek the authorisation of compulsory acquisition powers. No substantive case has been mounted by Network Rail that the proposed acquisition of rights would cause serious detriment to Network Rail's undertaking for the purposes of Section 127 of the Planning Act 2008 and the Applicant submits that its proposed form of Protective Provisions provides the appropriate protection for Network Rail's undertaking such that there will not be any serious detriment caused by the proposed acquisition of land and rights from Network Rail.
- 6.182 **National Grid Electricity Transmission Plc [RR-032], Land Engagement Report 4.6.3**
- 6.183 The Applicant has been engaging with NGET in relation to detailed design of the proposed connection to Bolney, and as a result it revised its land requirements as part of the Applicant's Change Request **[AS-046]** which was accepted on 24 July 2024 **[PD-018]**. NGET maintains an objection to the revised compulsory acquisition powers sought.
- 6.184 In relation to Plot 34/28, which is now proposed to be subject to new rights ('Unlicensed Works Rights') for the purposes of Work No. 20, NGET takes the view that the Applicant does not require any land rights because these will be secured via the connections process. It should be noted that this land is not currently operational land as it is outside of the existing substation boundary. Nor is there any agreement in place with NGET which will grant the necessary land rights that the Applicant requires to construct its works for the proposed connection to the National Grid. Once the Applicant has constructed its works, and the Connection Agreement and Interface Agreement are in place and operational, the land will become operational land and the Applicant will at that point be in a position to rely upon those agreements. It is premature to do so now and the Applicant reasonably requires land rights in absence of a binding agreement with NGET to ensure it can deliver its works in readiness for connection to the grid. Failure to do so could prejudice the grid connection.
- 6.185 The proposed rights sought are consistent with the rights being sought by private treaty and will only be delivered in accordance with a connection design that will have been approved by NGET. Interim cable design work will be carried out by the Applicant in September 2024. Surveys and consultation with Distribution Network Operators and other parties wishing to connect into Bolney, will also be needed to

settle the final detailed design. NGET will be a key partner in this process, which will ensure its undertaking is protected.

- 6.186 Other than claim that the Applicant should rely on rights in agreements that are yet to be concluded, NGET has not substantiated why the proposed acquisition of rights would cause significant detriment to its undertaking. The land is not currently operational, NGET will retain ownership of it, 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.
- 6.187 NGET has raised concerns that the proposed easement over Plots 34/25 and 34/26 could make it more difficult to site other customer's connections in this area. The Applicant notes that 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. It is therefore necessarily the case that those connections will have to take account of the Applicant's buried infrastructure, and the Applicant's proposed land rights are necessary to ensure it has the requisite protection. Those rights do not prevent other utilities from crossing its assets. 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 carry on its statutory undertaking. 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 this land area.
- 6.188 Whilst positive engagement is taking place with NGET (including between respective parties' solicitors) with regards to land rights, proposed to be in the form of an Option for an easement for the cable connection and a Connection 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. 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.
- 6.189 **National Highways [REP1-058], Land Engagement Report 4.6.4**
- 6.190 National Highways has refused to engage in the negotiation of the land rights sought by the Applicant because it considers that the Applicant should rely upon the provisions in the New Roads and Streetworks Act (NRSWA) for a streetworks licence to enable the Applicant to install its infrastructure in the adopted highway. The Applicant responded in **Table 2-25 of REP5-122** to National Highways' position on land rights, including to the generic Counsel opinion which it has submitted without any explanation as to how it applies to the matters in issue with regards the draft Order. 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).
- 6.191 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 National Highways. 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 submitted by National Highways, 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'.

6.192 The Applicant requires land rights:

- 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 an unacceptable 'gap' in protection where the cable route passes under the A27; and
- which do not rely upon National Highways to protect the apparatus from interference by others.
- 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.

6.193 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 for the purposes of section 127 of the Planning Act 2008. 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 strategic road network (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.

6.194 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: Hynet DCO- permanent acquisition of the subsurface; Yorkshire Green DCO - easements; High Speed Rail Acts 2017 and 2021 - freehold sub-surface and

easements; and 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).

6.195 National Highways' refusal to grant land rights to the Applicant is unreasonable; its undertaking is fully protected by the protective provisions in the Order, and the tests for compulsory acquisition in section 122 and section 123 of the Planning Act 2008 are met.

6.196 **Section 138 Planning Act 2008**

6.197 A number of other statutory undertakers and Electronic Communications Code operators have apparatus or relevant rights within the Order Land. The Applicant submits that the protective provisions in Schedule 10 the draft DCO provide the necessary protection to those entities for the purposes of Section 138 of the Planning Act 2008, as summarised below. Negotiations with Network Rail, National Highways and National Grid Electricity Transmission are dealt with in detail in **Section 8** below.

| <b>Operator</b>   | <b>Current Position</b>  |
|---|--|
| Environment Agency                                      | Access rights - The Applicant is not intending to extinguish any private rights belonging to the Environment Agency. Protective provisions were not requested by the Environment Agency.   |
| Southern Gas Networks Plc                               | Apparatus and rights - The Applicant is not intending to divert any apparatus or extinguish any rights belonging to Southern Gas Networks Plc. The Applicant has included protective provisions for the benefit of Southern Gas Networks Plc in Schedule 10, Part 5 of the draft DCO which are now agreed.                                     |
| Portsmouth Water Limited                                | Apparatus - The Applicant is not intending to divert any apparatus belonging to Portsmouth Water Limited. The Applicant has included protective provisions for the benefit of water and sewerage undertakers in Schedule 10, Part 1 of the draft DCO and Portsmouth Water is happy to rely on these.   |
| Scottish and Southern Energy Power Distribution Limited | Apparatus and rights - While the Proposed Development will cross SSEP's lines, no rights are proposed to be extinguished by the Applicant and no apparatus is proposed to be diverted by the Applicant. The Applicant has included protective provisions for the benefit of SSEP in Schedule 10, Part 4 of the draft DCO which are now agreed. |
| UK Power Networks (Operations) Limited                  | Apparatus and rights - There will be diversions of UKPN's apparatus required, however, these will either be carried out by UKPN or will be carried out by the Applicant under the protection of the Protective Provisions in Schedule 10, Part 1 of the draft DCO, which are agreed.   |
| Cityfibre Limited<br>Neos Networks Limited              | Apparatus - The Applicant has included protective provisions for the benefit of Operators of Electronic Communications Code Networks in Schedule 10, Part 2 of the draft DCO.  |

|  |  |
|--|--|
| Openreach Limited (BT)<br>Virgin Media Limited<br>Vodafone Limited |  |
| OCU Group Limited  | Apparatus – The Applicant has included protective provisions for the benefit of electricity, gas, water and sewerage undertakers in Schedule 10, Part 1 of Schedule 10, Part 1 and for the benefit of Operators of Electronic Communications Code Networks in Schedule 10, Part 2 of the draft DCO.  |
| Southern Water Services Limited                                    | Apparatus and rights - The Applicant is working in conjunction with SWSL to identify any potential conflicts between its assets and the proposed development to ascertain SWSL's proposed solutions to resolve any such conflicts. The Applicant has included protective provisions for the benefit of water and sewerage undertakers in Schedule 10, Part 1 of the draft DCO. |

## 7. ADDITIONAL ISSUES NOT COVERED IN THE EXA'S PRINCIPAL ISSUES

### *Biodiversity Net Gain*

- 7.1 The Applicant has committed (see C-104 in the Commitments Register **[REP5-086]** (updated at Deadline 6) and Requirement 14 of the draft DCO **[REP5-005]** (updated at Deadline 6) to delivering a biodiversity net gain of at least 10% measured using the Statutory Biodiversity Metric. The Applicant committed to delivering biodiversity net gain as all the relevant local authorities and Natural England requested this approach during the pre-application stage of the project. This commitment was made by the Applicant in 2022 despite this not being a mandatory requirement for Nationally Significant Infrastructure Projects until 2025.
- 7.2 The Applicant is implementing the biodiversity net gain system in line with government guidance, with some tailoring to account for the Rochdale envelope approach of the project overall and the need to return the majority of land to the relevant landowners for continued management (largely as agricultural fields) following the installation of the transmission cables. The approach to the calculation of biodiversity net gain reflects that undertaken by the Yorkshire Green project that was granted development consent in March 2024.
- 7.3 The Applicant is also committing to securing the delivery of 70% of the unit deficit needed prior to the commencement of construction. This will result in large areas of habitat being created or enhanced prior to construction commencing or in its early stages (noting that third party providers selling biodiversity units have up to 12 months to begin delivery as a stipulation of registering units on Natural England's Biodiversity Gain Site Register).
- 7.4 The Applicant notes that the biodiversity net gain mechanism allows for residual effects to be dealt with (i.e. reaching a position of no net loss / compensation) and the delivery of biodiversity net gain. This is a position common for all development

projects that use the statutory biodiversity metric. The way in which DEFRA and Natural England have created the process allows for residual effects to be accounted for either by delivering on or off-site. Therefore, the approach the Applicant has taken is in line with Government guidance.

- 7.5 The Applicant has taken a proactive step to committing to biodiversity net gain, a measure that will see a positive long term legacy benefit in terms of habitats, flora and fauna in the local area.

*Flood risk and drainage at Oakendene*

- 7.6 The Applicant has reached agreement with the Lead Local Flood Authority (LLFA) West Sussex County Council over the Outline Operational Drainage Plan [**REP5-052**] and Flood Risk Assessment [**REP4-039**], and in [**REP4-086**] (Ref 3.14) they confirmed that they had no outstanding concerns about flood risk and drainage at the Oakendene substation. This follows a series of technical engagement meetings and clarifications provided in the Applicant's Response to the Examining Authority's First Written Questions [**REP3-051**] (Question Reference 1.2) to demonstrate that there was sufficient space for required attenuation storage at the operational substation and that it could adequately drain when the ordinary watercourse to the south of the site was in flood. The Outline Operational Drainage Plan [**REP5-052**] has received updates to include for the provision of groundwater level monitoring and other matters to inform the detailed design of the Oakendene substation, including design of the drainage system as part of the final Operational Drainage Plan and its associated landscaping and planting measures as secured respectively through Requirements 17 and 12 of the Draft Development Consent Order [**REP5-005**] (updated at Deadline 6).

*Minerals*

- 7.7 Through the course of the Examination, the Applicant has reached agreement with West Sussex County Council (WSCC) on the subject of minerals management and delivering in line with relevant national and local policies. The Applicant identified a significant effect on the soft sand Minerals Safeguarding Area for the construction phase and operation and maintenance phase due to the sterilisation of an area of soft sand resource. However, this will be reversed on decommissioning of the onshore cable when a minerals developer could access this resource. The Applicant has engaged with WSCC throughout the Examination and agreed that a full Minerals Resource Assessment or prior extraction would not be proportionate or required. The Applicant has developed the embedded measures in liaison with WSCC to ensure that any mineral encountered will not be treated as waste. This is detailed in Commitment C-69 and section 4.13 in the Outline Code of Construction Practice [**REP5-064**] (updated at Deadline 6) with stage specific detail to be provided regarding minerals in the Materials Management Plan. The Applicant and WSCC have reached agreement on these matters as demonstrated in Table 3-11 of the Statement of Common Ground - West Sussex County Council [**REP5-094**], references WSCC51 and WSCC52.
- 7.8 The mitigation agreed will be compliant with section 5.11.28 of National Policy Statement NPS EN-1 (DESNZ, 2024), as it provides appropriate mitigation measures to safeguard all mineral resources (whether found in MSAs or elsewhere). The contents of the MMP will also show accordance with Policy MP9(b) of the West Sussex Joint Minerals Local Plan, in that it will confirm that the cable construction, as a non-minerals development within a MSA, will not permanently sterilise the minerals resource identified.

7.9 **DRAFT DCO OUTSTANDING ISSUES**The draft DCO (including the dMLs) has been updated throughout the Examination in response to submissions from Interested Parties, Affected Parties, in response to questions from the ExA and in response to the ExA's suggested changes to the draft DCO.

7.11 The various changes are set out in the Schedule of Changes to the draft DCO **[REP5-009]** (updated at Deadline 6) which also explains the rationale for each change. The draft DCO should also be read alongside the Explanatory Memorandum **[REP5-007]** (updated at Deadline 6) which contains a more detailed explanation of all of the powers sought by the draft DCO in order to construct, operate and maintain the Project. Accordingly, this section of these submissions does not seek to replicate those submissions or explanations, but instead focuses on the Applicant's position in respect of the principal issues outstanding at Deadline 6, or which there are notably few, and therefore it is the Applicant's position that in respect of the remainder the provisions of the draft DCO, there is no substantive disagreement with any party.

*MMO – Article 5*

7.12 The MMO has maintained in its various submissions to the Examination an objection to those parts of Article 5 of the draft DCO which provide for the undertaker to transfer the benefit of a deemed marine licence to another person, or to grant to another person the benefit of a deemed marine licence in connection with an agreement to lease to that other person the benefits of the Order for a period of time. In table 2.12 of its Deadline 5 submission Applicant's Comments on Deadline 4 Submissions **[REP5-122]** the Applicant has set out clearly its justification for the retention of Article 5 in the draft DCO in its current form. In simple terms, the Applicant's approach is well precedented in other Orders and ensures a smooth alignment between the transfer of the benefit of both the draft DCO and the dMLs (for example as will be needed to an OFTO) without the potential for further administrative delay and separation of liability that the MMO's suggested amendment risks creating. The Applicant also noted that the MMO has presented similar arguments in previous examinations and neither the Examining Authorities nor the Secretary of State have been unpersuaded to accept them.

*National Highways*

7.13 National Highways have raised concerns throughout the Examination as to the interaction between the Proposed Development and its undertaking. The Applicant has included the definitions requested by National Highways in the draft DCO, and has responded to the remaining concerns, which focus predominantly on the form of protective provisions, in its Deadline 5 submission Applicant's Comments on Deadline 4 Submissions **[REP5-122]**

*Compulsory Acquisition Powers – Time period for exercising powers*

7.14 During the course of the Examination the draft DCO has been amended to address concerns raised by the ExA as to the extent of compulsory acquisition powers sought by the Applicant. The Applicant's overall approach to compulsory acquisition is set out in section 15 above.

7.15 Requirement 1 in Part 3 of Schedule 1 of the draft DCO provides that the authorised project must commence no later than the expiration of seven years beginning with the date that the Order comes into force. In its schedule of proposed changes to the draft development consent order **[PD-013]** the ExA

proposed that this period be reduced to 5 years as it remained unconvinced why the Applicant requires a seven-year time period.

- 7.16 In its response at Deadline 5 (Applicant's Comments on the Examining Authority's Schedule of Changes to the DCO, **[REP5-121]**) the Applicant reiterated that the longer period is required for the reasons previously rehearsed in the Applicant's Responses to Examining Authority's First Written Questions (ExQ1) **[REP3-051]** and the Explanatory Memorandum. The requirement for a seven year period is driven by the requirement for the Applicant to win a Contract for Difference to secure a route to market, which cannot be applied for until consent is granted, and may not be awarded in the first round applied for; and concerns regarding supply chain challenges. There are low numbers of both suppliers for the turbines and associated plant, and contractors to install the project and these cannot be secured until the Contract for Difference is secured. In the event of any delays with securing a Contract for Difference, or other supply chain delays the time for implementation will be reduced. As the Applicant has also highlighted, a seven year implementation period has been accepted for several other offshore wind farm projects including most recently in the Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024, which is the closest comparator for the Proposed Development as both an extension project, and being promoted on the basis of contributing to 2030 targets.

*Oakendene substation and compound – Requirement 8*

- 7.17 In the schedule of proposed changes to the draft DCO **[PD-013]** and in its Rule 17 letter dated 17 July 2024 **[PD-017]**, the ExA requested changes to requirement 8 in order to secure a comprehensive site-specific plan for the area around the onshore substation site at Oakendene. The Applicant has considered the Examining Authority's recommendation but notes that the purpose of Requirement 8 is to secure approval for the detailed design for the Oakendene substation (Work No 16) to ensure that the matters listed in requirement 8(1) are approved before construction starts, and that the works are undertaken in accordance with the approved details and the parameters assessed in the Environmental Statement.
- 7.18 The Applicant also considers that the points raised in the proposed amendments are already covered by existing requirements, including
- the approval for a programme of stages for the Proposed Development (Requirement 10) which will determine the areas in respect of which discharge of requirements must be undertaken, and
  - for a construction traffic management plan (Requirement 24) which must accord with the Outline Construction Traffic Management Plan **[REP5-068]** (updated at Deadline 6). This outline document includes a specific traffic management plan for Kent Street..
- 7.19 As a consequence, the Applicant considers that requirement appropriate to retain the existing wording for Requirement 8(1) to (6), such that the works to deliver the onshore cable route are not held up by the need to secure approval for the detailed design for the substation.



*Bolney substation – operational noise*

- 7.20 At Issues Specific Hearing 2, both Horsham District Council and Bolney Parish Council suggested a requirement for the monitoring of operational noise at the extension to the existing Bolney substation comprising Work No. 20. This was reflected by the ExA in its schedule of proposed changes to the draft DCO **[PD-013]**.
- 7.21 The Applicant explained at Issue Specific Hearing 2 that, given the nature and duration of the operational noise at the Bolney substation extension it would be difficult to pick up by monitoring (see the Applicant's Post Hearing Submission-Issue Specific Hearing 2 **[REP4-072]**). Clarification was provided in the Applicant's Response to Action Points Arising from Issue Specific Hearing 2 and Compulsory Acquisition Hearing 1 **[REP4-74]**. In its response to the ExA's Schedule of proposed changes to the draft DCO **[REP5-121]** the Applicant maintained its position that it will not be feasible to develop a technically robust, practical, or proportionate scheme with respect to the risk of sound generation, and that if an increase in noise were measured during unattended monitoring, there would be no way to determine if this were due to the substation extension works for the Proposed Development or the existing National Grid substation, or any other transient source of noise. The Applicant maintains its position that a requirement that seeks to impose monitoring at the National Grid extension would therefore not be appropriate and would not meet the tests of necessity or precision.
- 7.22 Additional representations have been made by Horsham District Council in particular as to monitoring noise and vibration and air quality at other locations within the Order limits including construction compounds. The Applicant maintains that there is no need for an additional requirement to secure monitoring as this is already secured through requirement 22 to submit and secure approval for, and then implement a stage specific code of construction practice. Each stage specific plan must accord with the outline code of construction practice and so much include both a noise and vibration management plan and air quality management plan. Outline versions of these two plans have been submitted to the Examination and are to be certified pursuant to Article 51 and Schedule 16. The outline plans include for monitoring of noise and vibration, and air quality and dust respectively.

*Schedules 17 and 18 – without prejudice HRA derogation and MEEB provisions*

- 7.23 As set out above, a without prejudice derogation case has been submitted to the Examination notwithstanding the conclusion of the Applicant's assessment that there will not be an adverse effect on the integrity of the kittiwake, guillemot or razorbill features of the Flamborough and Filey Coast Special Protection Area or the guillemot feature of the Farne Islands Special Protection Area. In the event that the Secretary of State concludes that there will be an adverse effect on integrity at one or both special protection area, as a result of the Proposed Development the Applicant has provided wording for an additional article and associated Schedule 17 which can be included in the draft DCO to secure the implementation of compensation measures in advance of any adverse impacts on integrity having effect. The schedule has not yet been agreed with Natural England; the cover letter to their submission at Deadline 5 noted that comments on the DCO and these schedules would be provided at Deadline 6 (see under heading Deadline 6 in **[REP5-136]**).
- 7.24 In addition, a Stage 2 Marine Conservation Zone Assessment **[REP4-07]** (updated at Deadline 6) has been submitted to the Examination, on a precautionary and without prejudice basis, in response to Interested Parties' representations that,

notwithstanding the conclusions of the Applicant's Draft Marine Conservation Zone Assessment [APP-040], the conservation objective of maintaining the protected features of the Kingmere MCZ in a favourable condition will be hindered by the construction, operation and decommissioning phases of the Proposed Development alone or cumulatively with any other plan, project or activity. In the event that the Secretary of State does not accept that that the Proposed Development would not represent a significant risk of hindering the conservation objectives of the Kingmere MCZ the Applicant has provided wording for an additional article, and Schedule 18, which can be included in the draft DCO to secure measures of equivalent environmental benefit to be carried out before any impacts identified by the Secretary of State take effect. As with Schedule 17, this schedule has not yet been agreed with Natural England as the cover letter to their submission at Deadline 5 noted that comments on the DCO and these schedules would be provided at Deadline 6 (see under heading Deadline 6 in [REP5-136]).

### Protective provisions

- 7.25 **National Grid Electricity Transmission (NGET):** The Applicant has reached agreement on the protective provisions with the exception of the inclusion of a restriction on the exercise of compulsory purchase powers, the capping of the indemnity given by the Applicant to NGET, and the scope of NGET's assistance with obtaining alternative rights outside of Order limits. The rationale behind each parties' position on this provision is set out in Appendix 2 to the Explanatory Memorandum (**Application Document Ref. 3.2F**). Protective provisions in the Applicant's preferred form are included at Part 3 of Schedule 10 to the version of the DCO submitted at Deadline 6 (**Application Document Ref. 3.1F**)
- 7.26 **Scottish and Southern Electricity (SSE) -** Protective provisions have now been agreed are included at Part 4 of Schedule 10 to the version of the DCO submitted at Deadline 6 (**Application Document Ref. 3.1G**).
- 7.27 **Southern Gas Networks (SGN) -** Protective provisions have now been agreed and are included at Part 5 of Schedule 10 to the version of the DCO submitted at Deadline 6 (**Application Document Ref. 3.1G**) and the parties are currently in the process of negotiating a side agreement, with only the indemnity wording to be agreed.
- 7.28 **UK Power Networks –** Protective provisions for this undertaker have been agreed in the form of a side agreement with no requirement for provisions within the draft DCO itself. The wording of the standard form property rights is currently under negotiation, following which the parties will arrange execution and completion of the agreement.
- 7.29 **Network Rail Infrastructure Limited (Network Rail) -** The Applicant has reached agreement on the protective provisions with the exception of the inclusion of a restriction on the exercise of Order powers and the wording of the indemnity to be given by the Applicant to Network Rail. The rationale behind each parties' position on this provision is set out in Appendix 3 to the Explanatory Memorandum (**Application Document Ref. 3.2F**). Protective provisions in the Applicant's preferred form are included at Part 3 of Schedule 10 to the version of the DCO submitted at Deadline 6 (**Application Document Ref. 3.1F**)
- 7.30 **National Highways (NH)-** Discussions are ongoing between the Applicant and NH regarding the protective provisions. These discussions are reflected in the Statement of Common Ground submitted to the Examining Authority, and the parties' Deadline 5 Responses. The Applicant does not agree with NH that the

DCO should include protective provisions that are excessively onerous in the context of the Proposed Development. The Applicant's position is that the protective provisions should reflect the level of protection required to safeguard NH's statutory undertaking and as such the 'standard' protective provisions submitted by NH are not appropriate for inclusion in the DCO. The outstanding issues between the parties are as follows:

- 7.31 Requirement for financial security or cash deposit guarantee: the Applicant's position is that there are no works to the Strategic Road Network (SRN) and therefore no requirement to issue a bond or security to NH in advance of any works. To do so would place unnecessary and unwarranted financial obligation on the Applicant with the effect of adversely impacting its ability to deliver the Proposed Development.
- 7.32 Requirement for payment to NH of commuted lump sum: the Applicant's position is that as there are no permanent works to the SRN, there is no requirement for it as developer to pay to NH a commuted lump sum in advance of exercising the DCO powers to implement the Proposed Development.
- 7.33 NH states that their standard form protective provisions should be included in all DCOs regardless of whether they offer an appropriate level of protection in the context of the Proposed Development, in order that NH should be afforded the same provisions across all DCOs. The Applicant submits that the protective provisions should be suitable and proportionate to the context of the Proposed Development. The form of protective provisions at Part 7 to Schedule 10 of the draft DCO represent reasonable and proportionate protection.
- 7.34 Prior approvals: the Applicant's position is that the approvals that it should seek from NH in advance of exercising its powers to implement the authorised development should be proportionate and necessary in the context so to avoid delay in implementation. As there are no works to the SRN, seeking collateral warranties is not necessary.
- 7.35 Deemed consent: where the Applicant has sought approvals from NH under the protective provisions, it is not reasonable that such approval is deemed refused in the absence of response from NH.
- 7.36 The Applicant considers it inappropriate and not relevant that the processes for works to the SRN are included in the protective provisions, and the form of protective provisions included in Part 7 of Schedule 10 to the DCO reflects this position.
- 7.37 The Applicant has sought NH's response on the form of Protective Provisions included in Part 7 of Schedule 10 to the DCO and has also proposed a form of Side Agreement to NH to address commercial concerns. The Applicant proposes to continue engagement with NH and will update the SoS as necessary on any further progress.
- 7.38 **Aquind** - The Applicant continues to engage with Aquind regarding the terms of a Cooperation Agreement ('Agreement') to regulate the interface in delivery and operation of the respective projects. The parties have made significant progress in settling the Agreement. The single outstanding issue relates to the separation distances between respective assets. Aquind have submitted draft protective provisions that are based on the terms of the draft Agreement. The Parties continue to engage to settle the Agreement and therefore avoid the requirement for protective provisions. The Applicant has updated the ExA with a response to the proposed protective provisions as part of its submissions at Deadline 5 [**REP5-**

**122]** such that the form reflects the Applicant's position to avoid sterilisation of the Rampion 2 Order Limits.

7.39 As set out in its submission at Deadline 5, the Applicant made a further proposal to Aquind on separation distances in an attempt to reach agreement [**REP5-122**]. The Applicant did not accept that Aquind's position reflected a reasonable or proportionate position given the bespoke scenario in question in which the proposed Aquind development will bisect the Rampion 2 Order limits. The provisions as to proximity and separation must ensure coexistence and not compromise the development of either project, given that Aquind's proposal could unnecessarily sterilise a significant area of the Rampion 2 Order limits on account of Aquind's desire to maintain flexibility as to the use of a barge for works rather than a dynamically positioned vessel.

7.40 The Applicant's further proposal went beyond the Applicant's previous position, which as set out in the Applicant's previous submissions had been based on the Applicant's experience in developing offshore projects in proximity to subsea cable infrastructure and coming to practical and safe solutions through proximity and crossing agreements with owners of other infrastructure. On 31 July 2024 the Applicant received Aquind's response to its further proposal, containing further provisions and conditions regarding separation distances. The Applicant understandably requires time to properly consider the most recent proposal from Aquind and will respond to Aquind as soon as it is in a position to do so. The Applicant is progressing these discussions expeditiously and will submit a further written submission to update the Examining Authority following the closure on Tuesday.

7.41 The Applicant expects that, if The Crown Estate takes an approach to the Aquind interconnector cables typical to the granting of rights for offshore wind farm transmission export cables, rights would be granted to install and operate the Aquind cables within a designated area typically 30m in width around the centreline of each cable. Those rights are afforded some protection by The Crown Estate, typically in an area 250m either side of each cable, where other works and activities such as dredging would be restricted.

## 8. SECTION 106

8.1 It is acknowledged that the Proposed Development will have residual adverse effects on landscape in Horsham District as a consequence of both the construction effects of the onshore cable corridor and the onshore substation notwithstanding the application of mitigation secured through the draft Development Consent Order. The Proposed Development will also have residual adverse effects on the public rights of way and highway network in West Sussex crossed by the cable construction corridor and from which the construction works can be seen, notwithstanding the application of mitigation.

8.2 The Applicant has therefore progressed negotiations with both Horsham District Council (HDC) and West Sussex County Council (WSCC) to secure compensation for these residual effects in accordance with the application of the mitigation hierarchy and in compliance with the requirements of NPS EN-1 (DECC, 2011a).

8.3 The Applicant has also proposed mitigation in respect of the impact of the Proposed Development on air quality in accordance with the Air Quality Mitigation Strategy

([**REP3-053**] updated at Deadline 6) requiring a payment is to be made to HDC both in respect of the impacts in its own administrative area, and on behalf of Arun District Council, Mid Sussex District Council and Worthing Borough Council in respect of air quality impacts in their administrative areas. HDC will then distribute the funds to the relevant authorities for application towards measures to reduce harmful emissions and improve air quality.

- 8.4 The Applicant has mitigated the impacts on seascape landscape and visual effects from the array as far as possible whilst maintaining a viable project through implementation of the offshore design principles and controls imposed through the draft Development Consent Order as described in Applicant's Post Hearing Submission – Issue Specific Hearing 2 Further information on South Downs National Park [**REP4-063**].
- 8.5 In respect of residual seascape and landscape effects on the South Downs National Park, the SDNPA Deadline 4 response (Comments on any further information/submissions received by Deadline 3, Responses to ISH2 Action Points, Post-hearing submissions including written statements of oral cases and comments on Applicant's response to ExA Written Questions [**REP4-085**]) confirmed that 'seascape' would not be a singular issue on which to withhold consent subject to controls being secured in the draft DCO regarding the layout and design of the array, and provided that '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' (see SDNPA's response to Action Point 37).
- 8.6 The Applicant has also progressed negotiations with the South Downs National Park Authority (SDNPA) in respect of payment of a substantial financial contribution
- 8.7 in respect of compensation for both the residual visual impact on the South Downs National Park from the construction and operation of wind turbine generators comprising the Proposed Development after the application of the mitigation hierarchy in accordance with section 5.9 of National Policy Statement EN-1 (DECC, 2011a) and section 5.10 of EN-1 (DESNZ, 2023), and
- 8.8 to seek to further the statutory purposes of the South Downs National Park as required in section 11A of the National Parks and Access to Countryside Act 1949 (as amended).
- 8.9 Planning obligations to secure payment of mitigation, compensation and enhancement contributions as set out above have not yet been completed pending finalisation of arrangements with the owners of the land to be bound in each of the authorities' areas. Therefore the Applicant has included within the draft Development Consent Order (as submitted at Deadline 6) three requirements (41 to 43) which secure the submission and approval of schemes which must accord with the principles documents which have been submitted to the Examination for certification pursuant to Article 51. These schemes must:

- accord with the Horsham District mitigation and enhancement principles which have been submitted to the Examination (document 8.105) in respect of the agreement to be entered into with HDC;
  - accord with the public rights of way and landscape enhancement principles which have been submitted to the Examination (document 8.95) in respect of the agreement to be entered into with WSCC; and
  - accord with the National Park enhancement and furtherance principles which above been submitted to the Examination (document 8.106) in respect of the agreement to be entered into with SDNPA.
- 8.10 The principles documents submitted to the Examination set out the agreed scope for each scheme with each of the identified authorities. It is currently intended that post consent the schemes and the contributions they detail will be delivered in the form of agreements entered into pursuant to section 106 of the Town and Country Planning Act 1990.
- 8.11 The compensation and mitigation funds which are to be paid to the respective authorities have been agreed in terms of quantum as set out in the principles documents. The agreements to be entered into are to be substantially in accordance with those draft agreements appended to the principles documents. Importantly, the sums set out in the principles documents are settled and will be documented as such in the final agreement. The parties have also agreed the scope for application of each contribution to compensate for the residual adverse effects of the Proposed Development.
- 8.12 Agreement in respect of this approach has been reached with each of the authorities, as confirmed in joint position statements which have been agreed and signed by each party, and submitted to the Examination at Deadline 6 [**document references 8.107, 8.108 and 8.109**].
- 8.13 In order to impose a requirement, the decision maker must be satisfied that it is necessary and fulfils a planning purpose. Further, in order to conclude a section 106 agreement, and for it to be given weight in the decision making process, the contributions set out therein must be (inter alia) necessary to make the development acceptable in planning terms.
- 8.14 A requirement cannot be considered necessary where it is not given any weight as that would indicate the decision maker did not consider it to be addressing (and therefore reducing the weight of in the planning balance) an impact. If there is no reduction in the adverse impact overall in the balance, the scheme cannot be deemed to be necessary. If the impact is the same regardless of the obligation's existence, the imposition of the obligation cannot comply with the requirements of the Community Infrastructure Levy Regulations.
- 8.15 Accordingly, in proposing to secure this by means of a requirement, the Applicant and the three authorities are agreeing that the requirements, and the planning obligations they secure, are necessary. Should the ExA agree and include the three requirements as set out in the draft Development Consent Order submitted at Deadline 6 (Document ref 3.1) then the schemes which each requirement secures

must be given weight in the planning balance against any residual adverse seascape, landscape and visual effects arising from the Proposed Development within the South Downs National Park, and in respect of the duty to seek to further the purposes of the National Park;

- 8.16 against any residual adverse landscape effects arising from the construction of the onshore substation and the associated cable corridor in Horsham District; and
- 8.17 against any residual adverse effects arising from the closure or diversion of public rights of way and from the removal of hedgerows and trees on the users of the highway and public right of way network in the vicinity of the Order limits, as a consequence of construction of the Proposed Development.
- 8.18 The Applicant submits that the requirements 41, 42, 43 and the schemes they secure address residual adverse effects, and therefore that they should be given positive weight in the planning decision as compensation (in accordance with the mitigation hierarchy) against the residual significant effects identified above. Where such weight is not given, the scheme cannot be required as part of the consent.

## 9. **OVERALL BALANCE AND CONCLUSION**

9.1 The application must be determined in accordance with s104 of the Planning Act 2008. This requires the SoS to have regard to:

- NPS EN-1, EN-3 and EN-5 (2011) being the national policy statements which have effect for the purposes of the Proposed Development;
- the UK Marine Policy Statement (HM Government, 2011) and The South Inshore and South Offshore Marine Plan (2018), being the appropriate marine policy documents;
- the local impact reports submitted by Arun District Council, Brighton and Hove City Council, Horsham District Council, Mid Sussex District Council, the South Downs National Park Authority and West Sussex County Council; and
- any prescribed matters and any other matters that are important and relevant. With regard to the latter the Applicant highlights the recent updates to the national policy statements (2024) and in particular the need for the Proposed Development articulated through the urgent need for projects for which there is a critical national priority. Rampion 2 is one such project.

9.2 The submissions made by the Applicant in its application, in the updated documents submitted throughout the examination, in response to questions from the ExA both in writing and at hearings, and in response to the submissions of Interested and Affected Parties all demonstrate how the Applicant has had regard to the considerations raised in those documents and matters. The Applicant's final Examination Progress Tracker [REP4-060] (updated at Deadline 6) illustrates the extensive progress that the Applicant has made in resolving issues throughout the process where it is able to do so.

9.3 Whilst the Proposed Development will give rise to residual effects, including those which the Applicant acknowledges in some instances will be significant, these

residual effects have been mitigated as far as practicable and in accordance with the mitigation hierarchy. However, there are no residual effects that would be sufficient to outweigh the significant benefits of the Proposed Development in accordance with the extant national policy statements.

- 9.4 It is theoretically possible for the ExA to recommend, and for the SoS to impose, further restrictions on piling activity in response to the outstanding concerns raised by Natural England and the MMO to address impacts arising from underwater noise, but the Applicant would strongly urge them not to do so. The effect of such restrictions would be to curtail the annual development window, elongating the development programme, delaying or ultimately preventing the delivery of renewable electricity supplies and raising the potential downstream cost to the consumer. The emphasis throughout section 3.3 of EN-1 (2024) is on the need to ensure delivery of projects to enable the UK to meet its net zero targets. For offshore wind, paragraph 3.3.21 notes that means delivering (not just consenting) 50GW by 2030. Rampion 2 can contribute towards meeting that need, and in the Applicant's submission that is an extremely important factor which should be given significant weight not just in the principal decision, but in the terms of the consent that is granted where the Applicant has justified its position. Contrary to the position of Natural England and the MMO, the Applicant has explained why its assessment methodology is robust and based upon the best available science and therefore why its proposed mitigation is an appropriate response. The Applicant's position is that it should be adopted by the ExA in its recommendation and by the SoS in making the DCO. In doing so, they will allow Rampion 2 to make a significant contribution to the achievement of the UK's 50GW 2030 renewable energy target, towards the UK's net zero ambitions, and to meeting the urgent need for new renewable energy generation to address the impact of climate change.
- 9.5 The SoS must ultimately decide the application in accordance with the NPS which have effect unless to do so would be unlawful or in breach of other obligations, or if the adverse impacts would outweigh the benefits of the project.
- 9.6 Against that test, it is the Applicant's final submission that the SoS can conclude that Rampion 2 is in accordance with relevant NPS, and that none of the circumstances set out in section 104(4) to (8) Planning Act 2008 apply. Accordingly, it should be granted consent and the DCO granted in the terms sought by the Applicant.



## 10. REFERENCES

DESNZ. (2024). DESNZ Decision Letter: Norfolk Projects Offshore Wind Farms, Benthic Implementation and Monitoring Plan. Available at: <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010087/EN010087-003041-Secretary%20of%20State%20for%20Energy%20Security%20and%20Net%20Zero%20Decision%20Letter%20-%20v2%20BIMP.pdf> [Accessed July 2024]

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