

# **Little Crow Solar Park**

## **Examining Authority's (ExA) Consultation on the draft Development Consent Order (DCO)**

**Schedule of ExA's recommended amendments to the Applicant's  
draft DCO version F [REP6-003]**

**Issued on 1 September 2021**

### **Note to Interested Parties**

The Examining Authority (ExA) reminds Interested Parties (IP) that the recommended schedule of changes to the draft DCO [REP6-003] as set out below follows a statutory process. It is made irrespective of the recommendation the ExA will make to the Secretary of State (SoS) and is not an indication that ExA has already made up its mind on the Application. IPs participation and written responses will be treated as being given without prejudice to any position or view they hold on the scheme. IPs are invited to identify any outstanding concerns previously raised that are not addressed below.

For ease of reference, text shown emboldened in red identifies insertions of new text, while text shown with a double strike through is proposed for deletion. Please provide any comments you may wish to make on this schedule of changes by Examination Deadline 7 on 20 September 2021.



Ref	ExA's suggested changes	ExA's comments
<b>Articles</b>		
Article 2 Interpretation	<ul style="list-style-type: none"><li>• "archaeological management plan" means the document certified as the archaeological management plan for the purposes of <del>the</del> <b>this</b> Order <del>in accordance with</del> <b>under</b> article 14 (<del>certification of plans and documents etc</del>);"</li><li>• <del>"LEMP" means the landscape and ecological plan approved pursuant to requirement 10;</del></li><li>• "outline <del>battery safety management plan</del> <b>BSMP</b>" means the plan certified by the Secretary of State as the battery safety management plan for the purposes of this Order under article 14;"</li></ul>	<ul style="list-style-type: none"><li>• Revision suggested for reasons of consistency with other definitions that refer to article 14.</li><li>• The ExA considers that a definition for LEMP does not need to be included in Article 2 because it would duplicate what is stated in the Interpretation section of Part 1 of Schedule 2.</li><li>• The amended wording would provide a definition for the outline BSMP referred to in Requirement 7 and be consistent with the approach taken to defining the other outline management plans and the proposed revisions to the wording for Requirement 7 (see below).</li></ul>



Ref	ExA's suggested changes	ExA's comments
Article 8 Temporary closure and diversion of public footpath	'8(1) The undertaker may, during the construction and decommissioning of the authorised development, temporarily close public footpath 214 as specified in column <del>(2)</del> <b>(3)</b> of Schedule 3 (public footpath to be temporarily closed and diverted) to the extent specified in column <del>(4)</del> <b>(5)</b> of Schedule 3, and must provide the temporary substitute public footpath specified in column <del>(5)</del> <b>(6)</b> of Schedule 3 for the period during which the footpath is temporarily closed.'	Some of the column numbering referenced in Article 8 does not appear to be consistent with the column numbers used in Table 1 in Schedule 3. The ExA has therefore suggested amendments to the drafting of Article 8, which it considers would result in consistency between Article 8 and Schedule 3.
Article 10 Authority to survey and investigate the land	'(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, <b>under</b> Part 1 (determination of questions of disputed compensation) of the 1961 Act.'	Amendment suggested to assist clarity.
Article 14 Certification of plans		General point for consideration - Possible relocation of items (f) to (k) (the various outline management plans) to item (b) as they are technical appendices of the Environmental Statement.



Ref	ExA's suggested changes	ExA's comments
<b>Schedule 1 Authorised Development</b>		
Paragraph 1	<p>'1. The construction, operation, maintenance and decommissioning of a nationally significant infrastructure project as defined in sections 14(l) and 15 of the 2008 Act with associated development under section 115(1)(b) of the 2008 Act.</p> <p>The nationally significant infrastructure project comprises a generating station with a gross electrical output of <del>over 50</del> <b>up to 300</b> megawatts comprising all or any of the work numbers in this Schedule or any part of any work number in this Schedule—</p> <p><b>Work No. 1</b> - a generating station comprising: arrays of ground-mounted solar panels with a gross electrical output of <del>over 50</del> <b>up to 300</b> megawatts ...'</p>	<p>On the basis of the submissions that the Applicant has made during the Examination with respect to the generating capacity for the Proposed Development, including those made in response to the ExA's third written question 3.6.1 [REP6-019], the ExA considers that the generating capacity should be stated as being up to 300 megawatts in any made DCO.</p>
<b>Schedule 2 Part 1 – Requirements</b>		
5(2) Phases of authorised development	<p>'(2) <del>The scheme must be implemented as approved.</del> <b>The authorised development must be implemented in accordance with the approved phasing scheme.'</b></p>	<p>The ExA considers that the suggested wording would be more precise.</p>
6(1) Detailed design approval	<p>'(1) No phase of the authorised development <del>may be</del> <b>is to be</b> commenced until written details of the following for that phase have been submitted to and approved by the local planning authority.'</p>	<p>The ExA considers that the suggested wording would assist precision and enforcement.</p>



6(2) Detailed design approval	'(2) The details <b>to be</b> submitted <b>for approval</b> must accord with ...'	The ExA considers that the suggested wording would be more precise.
7 Battery safety management	<del>'7.-(1) Prior to the commencement of either Work No. 2A or Work No. 2B as notified to the local planning authority under Article 3(4) a Battery Safety Management Plan ("BSMP") BSMP must be ...'</del> <b>Safety Management Plan (BSMP)</b> '7.-(1) Prior to the commencement of either Work No. 2A or Work No. 2B as notified to the local planning authority under Article 3(4) a <b>BSMP</b> must be ...'	The ExA considers the suggested changes to Requirement 7 should be made because: <ul style="list-style-type: none"><li>• Battery Safety Management Plan (BSMP) would be defined in the interpretation section in Part 1 of Schedule 2; and</li><li>• They would be consistent with the format for the other management plans, for example the CEMP (Requirement 8).</li></ul>
8(1) and 8(2) Construction Environmental Management Plans (CEMPs)	<del>'(1) No phase of the authorised development may</del> <b>is to</b> be commenced until a CEMP for that phase has been submitted to and approved by the local planning authority. <del>The approved CEMP must be in accordance with the outline CEMPs</del> <b>Any CEMP submitted for approval must be in accordance with the outline CEMP and any approved CEMP</b> must be adhered to <del>throughout</del> <b>for the duration of the</b> works in <del>that</del> <b>the</b> phase <b>of the authorised development to which the CEMP relates.</b>  (2) The CEMP <b>for each phase of the authorised development</b> must provide details of— ...	The ExA considers that the suggested wording would assist precision and enforcement. The reference to lighting in subparagraph 8(2)(c) has been suggested for deletion because this would appear to duplicate part of the provisions of paragraph 8(2)(g).



	(c) nuisance management including measures to avoid or minimise the impacts of construction works (covering dust, noise, <b>and</b> vibration <del>and lighting</del> ); ...'	
9(1) and 9(2)(c) Construction Traffic Management Plan (CTMP)	<p>'(1) No phase of the authorised development <del>may</del> <b>is to</b> be commenced until a CTMP ...</p> <p>(2) The CTMP must include details of ...</p> <p>(c) a condition survey <del>of</del> <b>for</b> any road which will be affected by <b>undertaking</b> that phase of <b>the</b> authorised development and a further condition survey following that phase of the construction works. <del>and in</del> <b>In</b> the event that any defects are identified in that condition ...'</p>	The ExA considers that the suggested wording would be more precise.
10(1) and 10(2)(c) and (d) Landscape and Ecological Management Plan (LEMP)	<p>'(1) No phase of the authorised development <del>may</del> <b>is to</b> be commenced until a LEMP covering that phase <del>and in accordance</del> <b>which accords</b> with the outline LEMP has been submitted to and approved by the local planning authority.</p> <p>(2) The LEMP must include- ...</p> <p>(c) details of ... during the lifetime of the <del>scheme</del> <b>authorised development</b> ...</p> <p>(d) a timetable for the landscape management of the land within the Order limits during the lifetime of the <del>scheme</del> <b>authorised development</b>; and ...'</p>	The ExA considers that the suggested wording would be more precise.



<p>11(1) Construction hours</p>	<p>`(1) Subject to sub-paragraph (2), no construction works are to take place except between <b>the hours of—</b></p> <p>(a) 07:00 and 18:00 Monday to Friday; and (b) 08:00 and 13:30 on Saturday<del>7</del>.</p> <p><del>unless otherwise agreed by the local planning authority. ...'</del></p>	<p>The ExA considers that the suggested insertion of wording would assist precision, while the deleted 'tailpiece' text is unnecessary as the Applicant has not demonstrated that there would be circumstances necessitating working outside the hours stated in sub-paragraph (1) and which would also not come within the scope of the provisions of sub-paragraph (2).</p>
<p>12(1) Surface and foul water drainage</p>	<p>`(1) No phase of the authorised development <del>may</del> <b>is to</b> be commenced until ...'</p>	<p>The ExA considers that the suggested wording would be more precise.</p>
<p>13(1), (3), (5) and (6) Archaeology</p>	<p>`(2) No phase of the authorised development <del>may</del> <b>is to</b> be commenced until the archaeological exclusion zone ...</p> <p>(4) No phase within the authorised development <del>may</del> <b>is to</b> be commenced until a written scheme ...</p> <p>(6) Any archaeological works ... under the approved scheme <b>for investigation</b> must be ...</p> <p>(7) Any archaeological works or programme of archaeological investigation must be carried out in accordance with the <del>approved</del> scheme <b>approved under sub-paragraph (4)</b>.</p>	<p>The ExA considers that the suggested wording would be more precise and would assist the enforcement of this requirement.</p>





	(8) ' Within six months of the commencement of the authorised development the undertaker <del>shall</del> <b>must</b> submit a scheme ...'	
14(1) to (3) Protected Species	<p>'(1) No work, including site preparation works, shall be commenced in any phase <b>of the authorised development</b> until final pre-construction survey work has been carried out for that phase ...</p> <p>(2) Where a protected species is shown to be present, <b>the authorised</b> development must not <b>be commenced</b> within that phase until a scheme of protection ...</p> <p>(3) The authorised development must be carried out in accordance with <del>the approved</del> <b>any</b> scheme <b>approved under sub-paragraph (2)</b>.'</p>	The ExA considers that the suggested wording would be more precise.
15(1) and (2) Operational noise	<p>'(1) No phase of the authorised development <del>may</del> <b>is to</b> commence until an operational noise assessment ...</p> <p>(2) <del>The design as described in the operational noise assessment must be implemented as approved.</del> <b>The authorised development must be implemented and operated for its duration in accordance with the approved operational noise assessment.</b>'</p>	The ExA considers that the suggested wording would assist precision and enforcement.
16(1) to (3) Temporary diversion to public footpath	<p>'(1) No phase of the authorised development <del>may</del> <b>is to</b> be commenced and no decommissioning <del>may</del> <b>shall</b> be undertaken until a public rights of way management plan for the phase incorporating <del>that</del> <b>any</b> part of public footpath 214 and <del>proposed</del> <b>shown</b> to be temporarily closed and diverted on the temporary diversion of public</p>	The ExA considers that the suggested wording would aid precision and enforcement.



	<p>footpath plan has been submitted to and approved by the local planning authority ...</p> <p>(2) The <b>public rights of way management</b> plan must include details of— ...</p> <p>(3) Prior to the commencement of any phase of the authorised development and of any decommissioning the <b>public rights of way management</b> plan must be implemented as approved.'</p>	
18(1) to (3) Amendments to approved details	<p>'(1) With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the local planning authority <del>or another person</del>, the approved details must be carried out as approved unless an amendment or variation <del>is</del> <b>has</b> previously <del>agreed</del> <b>been approved</b> in writing by the local planning authority <del>or that other person</del> in accordance with subparagraph (2).</p> <p>(2) Any amendments to or variations from the approved details must be in accordance with the principles and assessments set out in the environmental statement. Such agreement may only be given in relation to immaterial changes where it has been demonstrated to <del>the satisfaction of</del> the local planning authority <b>or that other person</b> that the subject matter of the agreement sought is unlikely to give rise to any materially new or materially different environmental effect from those assessed in the environmental statement.</p> <p>(3) The approved details must be taken to include any amendments that may subsequently be approved in writing by the local planning authority <del>or that other person</del>.'</p>	With the iterative redrafting of the Schedule 2 of the draft DCO that the Applicant has undertaken during the Examination and having regard to the fact that the local planning authority would be responsible for discharging the Requirements contained within Part 1 of Schedule 2, in the first instance, there would be no other person/organisation approving amendments to previously approved details. The ExA therefore considers that the references to other/another person in Requirement 18 would be unnecessary and should be deleted.



		<p>While the ExA notes that other/another person has been included in the comparable Requirement, Requirement 19, of the made DCO for the Cleve Hill solar park [included in REP1-008], that would appear to be in the context of an arbitrator (another person) potentially determining part of Requirement 17 if the undertaker for Cleve Hill and the Environment Agency do not reach agreement with respect to a matter affecting the decommissioning of Cleve Hill.</p> <p>The ExA further notes that with respect to the Hornsea Three wind farm the Marine Management Organisation, the highway authority and lead local flood authority are responsible for discharging some of that wind farm's Requirements. For Hornsea Three a number of organisations (persons) would be responsible for discharging Requirements and issuing approvals for amendments made</p>
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		<p>to previously approved details under Requirement 26 of the Hornsea Three made DCO [appended to REP1-008].</p> <p>The multi-agency discharging circumstances for Cleve Hill and Hornsea Three would not arise for Little Crow, hence the reason why the ExA considers it would be unnecessary for the phraseology other/another person to be included in Requirement 18 of the draft DCO.</p>
<b>Schedule 2 Part 2 – Procedure for Discharge of Requirements</b>		
Paragraph 19 Interpretation	Delete the whole of paragraph 19 and renumber the subsequent paragraphs in Part 2 of Schedule 2	The ExA considers that there is no need for the interpretation provided within paragraph 19. That is because the only authority responsible for discharging the Requirements set out in Part 1 of Schedule 2 would be North Lincolnshire Council, with 'local planning authority' being defined in Article 2 of the draft DCO. While an interpretation paragraph similar to the proposed



		paragraph 19 has been included in the made DCO for the Cleve Hill solar park [appended to REP1-008], as explained above the circumstances for the discharging of the requirements for that scheme are different to those that would apply to Little Crow.
Paragraphs 20 (Applications made under requirements), 21 (Further information regarding requirements) and 22 (Appeals)	Throughout these paragraphs substitute 'discharging authority' with 'local planning authority'	Replacing local planning authority for discharging authority in paragraphs 20 to 22 would be consistent with paragraph 19 being deleted.
Paragraph 22 Appeals	<ul style="list-style-type: none"><li>• Throughout this paragraph substitute 'applicant' with 'undertaker'</li><li>• Delete sub-paragraph (10) in its entirety</li><li>• '(12) On application by the discharging authority or the applicant, the appointed person may give directions as to the costs of the appeal ... the appointed person must have regard to <del>relevant</del> <b>the</b> guidance on <b>costs in</b> the Planning Practice Guidance <del>website</del> or any official circular or guidance which may from time to time replace it.</li></ul>	In the interests of consistency within Part 2 of Schedule the ExA considers undertaker should replace applicant with undertaker to bring the phraseology used in paragraph 22 into line with paragraphs 20 and 21, with undertaker being defined in Article 2 and 'applicant' being



		<p>used in no other part of the draft DCO.</p> <p>With respect to sub-paragraph (10) the ExA considers that it would be unnecessary. That is because sub-paragraph (9) would make it clear that on appeal the 'appointed person's' decision would be 'final and binding' (unless a decision was subject to a successful claim for judicial review) and would form a part of the records relating to the authorised development kept by the local planning authority (North Lincolnshire Council).</p> <p>With respect to sub-paragraph (12) the ExA considers that the suggested wording would be more precise.</p>
<b>Schedule 3 Public footpath to be temporarily closed and diverted</b>		
Column 2 in Table 1	'Drawing P17-0718-30 <b>REV G 1</b> – PROW (document reference 2.39 LC DRW)	The version of the plan submitted by the Applicant with its application showing the proposed temporary diversion of



		public footpath 214 appears to be a revision G 1 or G I rather than D [Examination reference APP-043 and application document 2.39]
Column 6 in Table 1	'From <del>A-D-C-B</del> <b>A-C-D-B</b> as shown with a dashed black line ...'	The letters C and D appear to have been transposed in Column 6 when compared with the lettering shown on the footpath diversion plan [APP-043].

*End of Schedule*