



SUNNICA ENERGY FARM

EN010106

8.116 Response to Examining Authority's schedule of changes to
the draft Development Consent Order

Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010



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1 Introduction

1.1.1 This document sets out the Applicant's response to the ExA's commentary on the draft DCO dated 10th March 2023.

| Ref | ExA's suggested changes | ExA's comments | The Applicant's comments |
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| Article 2 | <p>"maintain" includes inspect, repair, adjust alter, remove, refurbish, reconstruct, replace and improve any part of, but not remove, reconstruct or replace the whole of, the authorised development and "maintenance" and "maintaining" are to be construed accordingly;</p> | <p>Definition inappropriately focused on authorised development to exclusion of parts of DCO for which replacement of the whole is likely to be irrelevant.</p> | <p>The Applicant does not agree with the ExA's proposed amendment to the definition of 'maintain' and refers to its earlier submissions on the scope of maintain, including most recently at paragraph 7.2.4 to 7.2.13 of its ISH4 post hearing submission [REP7-060].</p> <p>The proposed amendment would make it impossible to operate the authorised development as it would take away the undertaker's ability to alter, remove, refurbish, reconstruct or replace any part of the authorised development when exercising the power to 'maintain' it under Article 5(1) of the DCO. For example, in carrying out its "maintenance" should the Applicant, on "inspection", identify a solar PV panel that is damaged and following assessment concludes it cannot be "repaired" or "adjusted" and that the recommendation from the maintenance team is to "remove" the solar PV panel and "replace" it, the Applicant would not be able to do so. That is the consequence of the ExA's suggested changes - the changes effectively inhibit the Applicant's maintenance regime to the extent that parts of the Scheme would become inoperable. This cannot be the intention of the ExA.</p> <p>The consent for the authorised development will be time limited to 40 years in accordance with Requirement 22 of Schedule 2 to the DCO. If there are concerns that the "maintenance" power could result in the Scheme operating beyond its assumed lifetime in the Application documents by the Applicant continuing to "maintain" the asset, then that cannot happen given the time limit set out in Requirement 22. This is different to other NSIPs where often there is no time limit on the operational period. The Applicant's definition of</p> |

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| | | <p>'maintain' must also be considered in the context of Article 5(3), which deals with the concern about environmental effects as the power to maintain the authorised development doesn't authorise any replacement works that give rise to new or materially different effects as assessed in the environment statement (which is a certified document – see Schedule 10 to the DCO).</p> <p>The Applicant notes from the discussion at ISH4 that East Cambridgeshire District Council's (ECDC) concern primarily relates to the inclusion of 'remove', 'replace' and 'reconstruct' in the definition of 'maintain'. In drafting the DCO the Applicant considered other recently made DCOs, including both made solar DCOs to date, and notes that, whilst the exact order of wording may differ, the scope of the definition including 'remove', 'replace' and 'reconstruct' has precedent in several other DCOs. This includes the Cleve Hill Solar Park Order 2020, the Little Crow Solar Park Order 2022, the Riverside Energy Park Order 2020, the Sizewell C (Nuclear Generating Station) Order 2022 and The East Northamptonshire Resource Management Facility Order 2023, which is the most recently made DCO by the Department for Business, Energy and Industrial Strategy (the former decision maker for energy DCOs).</p> <p>Accordingly, the definition of 'maintain' as proposed by the Applicant is required to ensure the efficient operation of this NSIP that will generate and supply much needed renewable energy and the Applicant's proposal is well precedent in many other energy DCOs. The consequence of the suggested amendment would hinder the maintenance required for the Scheme, result in applications being required to simply "remove" and "replace" a solar PV, as an example, and be unworkable. Given the linkage to the assessment in the environment statement and the fact that the Secretary of State has approved this wording in recent DCOs, including in 2023,</p> |
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| | | | <p>the Applicant considers its original definition is clear, precise and controlled.</p> |
| <p>Article 2</p> | <p>“permitted preliminary works” means all or any of— ...; or (h) site clearance (including vegetation removal and demolition of buildings); so however that sub-paragraphs (a), (c), (e), (f) or (g) do not include the formulation of or change to any vehicular access, whether or not on a temporary basis.</p> | <p>To meet SCC’s concern that all works involving the formulation of or change to any vehicular access, whether or not on a temporary basis or not, need to be subject to a prior approval process.</p> | <p>The Applicant has considered the ExA’s proposed change and does not agree that the inclusion of the amendment into the definition of ‘permitted preliminary works’ is required. The Applicant has already committed to providing a ‘permitted preliminary works traffic management and access plan’ for sub-paragraphs (b), (d) and (h) of the ‘permitted preliminary works’ before they can be carried out, which is secured pursuant to Requirement 16(3) of Schedule 2 to the DCO.</p> <p>The Applicant proposes in its final DCO to increase the scope of Requirement 16(3) so that the requirement for a permitted preliminary works traffic management and access plan to be approved is before any ‘permitted preliminary works’ are carried out (thereby capturing all sub-paragraphs in the definition of ‘permitted preliminary works’. This will provide Suffolk County Council (SCC) with an appropriate mechanism to approve the formation of new or alteration of existing vehicular access for any ‘permitted preliminary works’.</p> <p>The proposed amendment to Requirement 16(3) is shown below:</p> <p>(3) No part of the permitted preliminary works for each phase comprising above ground site preparation for temporary facilities for the use of contractors, the diversion and laying of apparatus and site clearance (including vegetation removal, demolition of existing buildings and structures) may start until a permitted preliminary works traffic management and access plan for that phase has been submitted to and approved by the relevant county authority for that phase or, where the phase falls within the administrative areas of both the county of Suffolk and the county of Cambridgeshire, both relevant county authorities.</p> <p>This requirement will mean that SCC and CCC will be able to approve any new access (if any) or alterations to accesses (if</p> |

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| | | | any) whether or not on a temporary basis that may be required for the permitted preliminary works before any of the are carried out. We consider this to be the appropriate amendment. |
| Article 9(1)(b) | Power to alter layout, etc., of streets (b) in the case of the streets specified in column 2 of the table in Part 2 (temporary alteration of layout) of Schedule 5 and Schedule 6 temporarily in the manner specified in relation to that street in column 3. | To make adequate provision for control of reinstatement of public rights of way affected | <p>The Applicant refers to paragraphs 7.2.17 to 7.2.18 of its ISH4 post hearing submission [REP7-060]. The Applicant does not agree that the ExA's proposal is the appropriate way of dealing with this point, as this would take a right that is constrained to altering the layout of streets and expand it to include any rights of way that the undertaker might want to interfere with for the purposes of ensuring appropriate mitigation is provided. We do not consider that this is the intention of the ExA, to give the Applicant even greater powers.</p> <p>The Applicant confirmed at ISH4 and in its post hearing submission [REP7-060] that it would add an equivalent of Article 9(3), which is the restoration provision, into Article 11 of the DCO, which would require the undertaker to restore any public right of way that has been temporarily affected, such as by motor vehicles crossing the right of way pursuant to Article 11 or the installation of the cable pursuant to Article 8, under this Order to the reasonable satisfaction of the street authority. This will address the Councils' concern in a way that is proportionate to the powers the Applicant is seeking in the context of the Scheme.</p> |
| Article 9(3) | (3) The undertaker must restore any street that has been temporarily altered under this Order to the reasonable satisfaction of the street authority in accordance with the protective provisions in Schedule 13, Part 13. | To protect the position of the relevant street authority absent alternative provisions in any eventual side agreement. | <p>The Applicant does not agree with the proposed amendment as the reference to compliance with the protective provisions is too broad to be in accordance with good SI drafting standards. It would instead need to point to a particular provision within Part 13 of Schedule 12 (we would note that the protective provisions are in Schedule 12 not Schedule 13 as indicated by the ExA in its suggested changes).</p> <p>In any event, this is not necessary as the Applicant will need to comply with the protective provisions included in the DCO</p> |

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| | | | <p>pursuant to Article 40 and duplication in drafting is also not good practice. The protective provisions in Schedule 12 (and the new protective provisions for the protection of the highway authorities in Part 13 in the final DCO) will therefore bite without the ExA's proposed change, unless they fall away in favour of any legal agreement entered into between the undertaker and the highways authority, which is provided for in Part 13.</p> |
| <p>Article 11(1)</p> | <p>11.—(1) The undertaker, during and for the purposes of constructing or maintaining the authorised development, may temporarily stop up, prohibit the use of, authorise the use of, alter or divert any public right of way and may for any reasonable time only as a last resort in accordance with the detailed Construction Traffic Management Plan approved under Schedule 2 Requirement 16 —</p> | <p>To address concerns of CCC and SCC.</p> | <p>The Applicant refers to paragraphs 7.2.21 to 7.2.24 of its ISH4 post hearing submission [REP7-060]. The Applicant agrees with the Councils that closure of public rights of way should be avoided and that they will only be closed temporarily in the event of there being no reasonable alternative to closure that would enable the works to be carried out safely and expeditiously within the limits of deviation for that work.</p> <p>The Applicant has reflected this in paragraph 6.3.4 of the Framework Construction Traffic Management Plan [REP7-017], which is secured pursuant to Requirement 16(2).</p> <p>In addition, the undertaker must consult with the local highway authority on public rights of way management or closures in accordance with Article 11(4) of the draft DCO, which gives them oversight of how the power in Article 11(1) will be used. The applicant as reflected this in paragraph 6.3.4 of the Framework Construction Traffic Management Plan, which provides that “the local highway authority will be consulted on PRow management or closures in accordance with the provisions of article 11 of the DCO.”</p> <p>The Applicant does not consider the proposed amendment to the DCO to be appropriate drafting for a Development Consent Order, which is a Statutory Instrument rather than a contractual document, as the proposed wording does not make it clear how, and to whom, the undertaker would demonstrate that closure of the public right of way is a ‘last resort’. The Applicant’s view is that the amendments made to</p> |

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| | | | <p>paragraph 6.3.4 of the Framework Construction Traffic Management Plan [REP7-017] at deadline 7 are sufficient to deal with CCC and SCC's concerns.</p> |
| <p>Article 27</p> | <p>Temporary use of land for constructing the authorised development</p> <p>27.—(1) The undertaker may, in connection with the construction of the authorised development— ... (b) remove any buildings, agricultural plant and apparatus, drainage, fences, and debris and vegetation from that land;</p> | <p>The applicant should have provided information prior to determination as to where trees and other vegetation will be required for removal to facilitate access, making the excised wording unnecessary.</p> | <p>The Applicant refers to paragraphs 7.2.41 to 7.2.47 of its ISH4 post hearing submission [REP7-060]. The Applicant does not accept the proposed deletion from Article 27(1) of the DCO and the ExA's reasoning that the Applicant should have provided information prior to determination of where trees and vegetation will be required to be removed to facilitate access.</p> <p>The function of the power in Article 27(1)(b) is to allow the undertaker to use someone else's land on a temporary basis to lop or fell trees or other vegetation pursuant to Articles 36 and 37 of the DCO, which are the powers that give approval to carry out the works and remove the vegetation. It is therefore a land power that is analogous, for example, to the alteration provisions in a lease. Quite simply, the proposed change does not align to the reason given for the change.</p> <p>The Councils have not asked for the power under Article 27(1)(b) to be removed, rather they have raised concerns about the scope of the power and requested more certainty as to what trees will require works.</p> <p>The Applicant has submitted the Arboricultural Impact Assessment [REP7-046] that considers the likely direct and indirect arboricultural impacts required to facilitate the Scheme.</p> <p>Requirement 6 has been updated so that the detailed design, which is to be approved by the relevant planning authorities, must take into account either the Arboricultural Impact Assessment or updated tree surveys for locations within that phase where arboricultural impacts are likely, such surveys to be carried out prior to the submission of these details and to be submitted as part of these details. Similarly, the Landscape and Ecology Management Plan must be approved by the relevant planning authorities prior to the commencement of</p> |

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| | | | the authorised development and any permitted preliminary works comprising vegetation removal. This gives the Councils sufficient oversight and control of vegetation removal as part of delivering the Scheme. |
| Article 36 | <p>Felling or lopping of trees and removal of hedgerows</p> <p>...</p> <p>(2) In carrying out any activity authorised by paragraph (1) or (4) the undertaker must—</p> <p>...</p> <p>(b) ensure all works are carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other more suitable recognised codes of good practice provided these meet or exceed the appropriate British Standards, except for where not practically possible;</p> | To maintain the effectiveness of the provision. | The Applicant refers to paragraphs 7.2.46 of its ISH4 post hearing submission [REP7-060] where it confirms that this change will be made in the updated draft DCO to be submitted at Deadline 10. |
| Requirements | | | |
| R.6 | <p>Detailed Design Approval</p> <p>...</p> <p>(i) how the design of that phase has taken account of either—</p> <p>(aa) the arboricultural impact assessment; or</p> <p>(aa)(bb) updated tree surveys for locations within that phase where arboricultural impacts are likely, such surveys to be carried out prior to the</p> | To meet CCC's concern that a pre-commencement condition survey be completed. | The Applicant has considered the ExA's proposed amendment and acknowledges the point, but it does not think that insertion of paragraph (k) into Requirement 6 is the appropriate place as this requirement relates to detailed design approval. The Applicant's view is that the pre-commencement condition surveys of relevant public rights of way and the need to make good any damage to public rights of way, are secured in paragraph 5.2.11 of the Framework Construction Traffic Management Plan and Travel Plan [REP7-017]; however, it proposes to include a new public rights of way requirement in Schedule 2 to address the ExA's comments. |

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| | <p>submission of these details and to be submitted as part of these details; and</p> <p>(j) programme for landscaping works; and</p> <p>(k) the pre-commencement condition survey of all public rights of way affected by haul road/cable route crossings has been completed in accordance with 5.2.11 of the Construction and Traffic Management Plan, and a reinstatement plan of the public rights of way surfaces and widths agreed,</p> | | <p>As referred to above, the Applicant has also agreed to update Article 11 to add an equivalent of Article 9(3) into the draft DCO that would require the undertaker to restore any public right of way that has been temporarily altered under the DCO to the reasonable satisfaction of the street authority.</p> <p>The proposed requirement is:</p> <p>Public rights of way</p> <p>24–(1) The undertaker must not exercise the power conferred by article 11(1) and 11(3) of this Order in relation to a public right of way until the scope of the pre-commencement condition surveys for the extents of that public right of way have been submitted to and approved by the relevant county authority, or where the extents of the relevant public right of way falls within the administrative areas of both the county of Suffolk and the county of Cambridgeshire, both relevant county authorities.</p> <p>(2) The condition survey must be carried out substantially in accordance with the scope approved pursuant to sub-paragraph (1) and the outcomes of the survey must be submitted to relevant county authority, or where the relevant public right of way falls within the administrative areas of both the county of Suffolk and the county of Cambridgeshire, both relevant county authorities.</p> <p>(3) The undertaker must not exercise the powers conferred by article 11(1) and 11(3) of this Order until a scope of the reinstatement plan for the extents of the public rights of way in relation to which the undertaker proposes to exercise the powers conferred by article 11(1) or 11(3) within the pre-commencement surveys approved pursuant to sub-paragraph (1) and a timeline for the reinstatement works has been submitted to and approved by the relevant county authority, or where the extents of the relevant public right of way in relation</p> |
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| | | | to which the undertaker proposes to exercise the powers conferred by article 11(1) or 11(3) falls within the administrative areas of both the county of Suffolk and the county of Cambridgeshire, both relevant county authorities. |
| R.7(3) | <p>Fire safety management</p> <p>...</p> <p>(3) The BFSMP must be substantially entirely in accordance with the outline battery fire safety management plan.</p> | In the interests of certainty. | <p>The Applicant refers to its response to the ExA's first written question 1.5.67 [REP2-037].</p> <p>Without the term 'substantially', 'entirely in accordance with' (and indeed 'in accordance with') can be construed as meaning exactly the same as. This is not appropriate for Requirement 7, or indeed any other Requirement in the DCO, as it is an 'outline' battery fire safety management plan that sets the outline for the final plan to be developed based on the detailed design of the Scheme and any update in legislation or guidance. It is therefore important that the term 'substantially' remains as part of this Requirement in order to build in the ability for the Applicant, and the planning authorities as part of their approval process, to update the plan in question to take account of final detailed design and any updated legislation and guidance.</p> |
| R.8(1) | <p>Landscape and ecology management plan</p> <p>8.—(1) No phase of the authorised development may commence, and no part of the permitted preliminary works for that phase comprising vegetation removal may start, until a written landscape and ecology management plan (which is substantially must be entirely in accordance with the outline landscape and ecology management plan) has been submitted to and approved by the relevant planning authority for that phase...</p> | In the interests of certainty. | <p>The Applicant refers to its response to the ExA's first written question 1.5.67 [REP2-037].</p> <p>Without the term 'substantially', 'entirely in accordance with' (and indeed 'in accordance with') can be construed as meaning exactly the same as. This is not appropriate for Requirement 8, or indeed any other Requirement in the draft DCO, as it is an 'outline' landscape and ecology management plan that sets the outline for the final plan to be developed based on the detailed design of the Scheme and any update in legislation or guidance. It is therefore important that the term 'substantially' remains as part of this Requirement in order to build in the ability for the Applicant, and the planning authorities as part of their approval process, to update the</p> |

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| | | | plan in question to take account of final detailed design and any updated legislation and guidance. |
| R.11(6) | <p>Fencing and other means of enclosure</p> <p>...</p> <p>(6) Prior to the date of final commissioning of any phase, any permanent fencing, walls or other means of enclosure for that phase approved pursuant to sub-paragraph (2) must be completed and properly maintained for the operational lifetime of those works.</p> | To make proper provision for maintenance. | <p>The Applicant agrees to make the below change in the next version of the draft DCO to be submitted at Deadline 10:</p> <p>(6) Prior to the date of final commissioning of any phase, any permanent fencing, walls or other means of enclosure for that phase approved pursuant to sub-paragraph (2) must be completed and properly maintained for the operational lifetime of the part of the authorised development enclosed by the permanent fencing, walls or other means of enclosure.</p> |
| R.14 | <p>Construction environmental management plan</p> <p>14.—(1) No phase of the authorised development may commence until a construction environmental management plan (which must by substantially be entirely in accordance with the framework construction environmental management plan)</p> | | <p>The Applicant refers to its response to the ExA's first written question 1.5.67 [REP2-037].</p> <p>Without the term 'substantially', 'entirely in accordance with' (and indeed 'in accordance with') can be construed as meaning exactly the same as. This is not appropriate for Requirement 8, or indeed any other Requirement in the draft DCO, as it is an 'framework' construction environmental management plan that sets the framework for the final plan to be developed based on the detailed design of the Scheme and any update in legislation or guidance. It is therefore important that the term 'substantially' remains as part of this Requirement in order to build in the ability for the Applicant, and the planning authorities as part of their approval process, to update the plan in question to take account of final detailed design and any updated legislation and guidance.</p> |
| R.16(1) | <p>Construction traffic management plan and travel plan</p> <p>16.—(1) No phase of the authorised development may commence until a construction traffic management plan (which must be substantially entirely in</p> | In the interests of certainty. | <p>The Applicant refers to its response to the ExA's first written question 1.5.67 [REP2-037].</p> <p>Without the term 'substantially', 'entirely in accordance with' (and indeed 'in accordance with') can be construed as meaning exactly the same as. This is not appropriate for Requirement 8, or indeed any other Requirement in the draft</p> |

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| | <p>accordance with the framework construction traffic management plan)</p> | | <p>DCO, as it is an 'framework' construction traffic management plan that sets the framework for the final plan to be developed based on the detailed design of the Scheme and any update in legislation or guidance. It is therefore important that the term 'substantially' remains as part of this Requirement in order to build in the ability for the Applicant, and the planning authorities as part of their approval process, to update the plan in question to take account of final detailed design and any updated legislation and guidance.</p> |
| <p>R.16(3)</p> | <p>Construction traffic management plan and travel plan ... (3) No part of the permitted preliminary works for each phase comprising above ground site preparation for temporary facilities for the use of contractors, the diversion and laying of apparatus and or site clearance (including vegetation removal, demolition of existing buildings and structures) may start and the diversion and laying of apparatus so far as it relates to works in the highway (including public rights of way) and the crossing of highways (including public rights of way) for construction purposes may start until a permitted preliminary works traffic management plan for that phase has been submitted to and approved by the relevant county authority for that phase or, where the phase falls within the administrative areas of both the county of Suffolk and the county of Cambridgeshire, both relevant county authorities</p> | <p>Drafting improvement/error, and to make adequate provision for the safeguarding of public rights of way.</p> | <p>As stated above the Applicant is proposing the below amendment to Requirement 16(3) which negates the need for the proposed ExA change:</p> <p>(3) No part of the permitted preliminary works for each phase comprising above ground site preparation for temporary facilities for the use of contractors, the diversion and laying of apparatus and site clearance (including vegetation removal, demolition of existing buildings and structures) may start until a permitted preliminary works traffic management and access plan for that phase has been submitted to and approved by the relevant county authority for that phase or, where the phase falls within the administrative areas of both the county of Suffolk and the county of Cambridgeshire, both relevant county authorities.</p> <p>Given that the Applicant's proposed amendment means that no permitted preliminary works can start until the permitted preliminary works traffic management and access plan has been submitted and approved, no construction work can happen anywhere until that plan (or indeed the main construction traffic management plan and traffic plan) has been approved. Therefore, no apparatus would be diverted or laid in the highway or public rights of way and there would be no crossings of highways (including public rights of way) for</p> |

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| | | | <p>construction purposes. Accordingly, the Applicant's proposed change covers the point.</p> |
| <p>R.24 New requirement</p> | <p>24. Replacement of any Work shall require an application to be made to the local planning authority not less than 6 months before the commencement of any such operation and be agreed in writing. Replacement shall commence in accordance with the approved details.</p> | <p>See comment on Article 2</p> | <p>The Applicant refers to its response to the ExA's comments on the definition of maintain in Article 2. The ExA's proposed amendment to the definition would make this requirement redundant, as the undertaker would not have the power to replace any parts of the authorised development pursuant to Article 5 (<i>power to maintain the authorised development</i>) in the first place and therefore has been prevented by that amendment from even making an application pursuant to the DCO as 'replace' would not be included in the definition of maintain. Any replacement of the Scheme would have to be outside of the development consent granted. Indeed, the consequence of that is that should any element of the NSIP itself require replacement, such as a solar PV panel, then that could not be done via the Town and Country Planning Act, so an amendment to the DCO as granted would be required. This is simply not proportionate. The only way this requirement would work is if the definition of maintain enabled "replacement" with the requirement then controlling how that was carried out – akin to the street powers. However, even that would not be proportionate as why should an operator seek approval to replace an element of the authorised development, such as a single solar PV panel, when it has development consent? Secondly, the proposed requirement does not understand how maintenance works – if "replacement" is required following inspection, then it may not be a planned "replacement" enabling the Applicant to give 6 months notice. This would result in the generating station under-performing as the Applicant would be prevented from replacing the element for at least 6 months, thereby reducing renewable energy generation and hindering the country's ability to meet net zero.</p> <p>Furthermore, it is not clear what 'replacement of any Work' means as 'Work' is not defined in the draft DCO so the</p> |

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| | | | <p>threshold for this requirement triggering an application to the local planning authority is not clear.</p> <p>The sensible and proportionate way forward, is for the ExA to retain the Applicant's proposed definition of 'maintain' in the context of the Applicant's update to paragraph 2.1.1 of the Framework Operational Environmental Management Plan [REP7-036] which requires the undertaker to submit to the relevant planning authorities every 12 months from the date of final commissioning a planned maintenance schedule for the year ahead. The Applicant further updated paragraph 2.1.1. to incorporate suggested wording from West Suffolk Council (WSC) that specifies the minimum details that the planned maintenance should include and a notification procedure for unplanned maintenance.</p> <p>The Councils recorded in the final signed Statement of Common Ground submitted at Deadline 8 that the wording in the Framework Operational Environmental Management Plan [REP7-036] is agreed. The Applicant is therefore satisfied that the procedure in the Framework Operational Environmental Management Plan [REP7-036] is sufficient to address the Councils' concerns in relation to the scope of the power to 'maintain' and that a further requirement is not necessary or proportionate, or indeed workable, nor is the Applicant aware of any precedent in other made DCOs for this requirement.</p> |
| <p>Schedule 1 Work No.1</p> | <p>SCHEDULE 1 AUTHORISED DEVELOPMENT</p> <p>...</p> <p>Work No. 1— a ground mounted solar photovoltaic generating station with a gross electrical output capacity of over 50 megawatts including</p> | <p>To exclude solar panels and other above ground infrastructure in the event that the SoS determines that the residual adverse impacts of the Applicant's proposals are such that effective mitigation of the adverse impacts would not be achievable and the residual adverse impacts would not be acceptable without excluding</p> | <p>The Applicant refers to its response to SCC's proposed amendments to Schedule 1 of the draft DCO [REP7-064]. The Applicant has considered the ExA's proposed amendments and does not consider that they are required as the Applicant's proposed Scheme, as set out in Schedule 1 to the draft DCO submitted at Deadline 6 [REP6-013], is acceptable.</p> <p>However, the Applicant will prepare a second "without prejudice" draft DCO to be submitted at Deadline 10 setting out revisions to the Scheme, which the Secretary of State</p> |

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| <p>— (a) Work No. 1A— subject to sub-paragraph (aa), works on the East A Site comprising—</p> <ul style="list-style-type: none"> (i) solar modules; (ii) solar stations; (iii) (electrical cables including electrical cables connecting to Work No. 3A; (iv) monitoring and control systems housed within a control room building or container; and (v) weather stations and direct current (DC) electrical boxes. <p>(aa) Other than works comprised within or for the purposes of sub-paragraph (a)(iii), Work No. 1A works must not be constructed on the land labelled plots 2-02 and 3-01 on the land plans.</p> <p>(b) Work No. 1B— subject to sub-paragraph (ba), works on the East B Site comprising—</p> <ul style="list-style-type: none"> (i) solar modules; (ii) solar stations; (iii) electrical cables including electrical cables connecting to Work No. 3B; | <p>these works. SCC's commentary in [REP7- 073] and the Applicant's response [REP7-064] refer.</p> | <p>could consent if it disagrees with the Applicant's position that its Scheme is acceptable.</p> <p>The Applicant's proposed second draft DCO will reflect the various permutations to the Scheme that flow from Council's LIR that originally suggested reducing the Scheme through the removal of parcels E05, E12, E14 and W03-W12. It cannot be accepted, or indeed logical, that there is just one permutation, being the wholesale removal of all of these parcels. Accordingly, it has to be accepted by all that by suggesting these parcels are removed, there are different permutations that the Secretary of State could consider. We refer to our response to the ExA's Rule 17 letter submitted alongside this response to the ExA's Schedule of Changes.</p> <p>The various permutations, however, do not need to be referenced in Schedule 1 as they will be reflected in the corresponding Works Plans and Land and Crown Land Plans that accompany it. The numbered works in Schedule 1 are defined by reference to the sites, e.g. 'East A Site' and 'East B Site', which are in turn defined by reference to the Works Plans. This is the case for all Work Nos. except for Work No 10. (<i>works to create and maintain stone curlew reserve</i>), which the Applicant proposes will be in square brackets as this may not be required if parcels E5, E12 and E13 are removed from the Scheme.</p> <p>As our response to the Rule 17 letter states, the Applicant will prepare updated Works Plans and Land and Crown Land Plans on the request of the Secretary of State when it is known the permutation or permutations that they are considering in their decision making process, which of course all interested parties can then comment on. At this point, the Applicant is not clear how it is reasonable or logical that a "reduced" scheme can only involve the wholesale removal of parcels E05, E12, E14 and W03-W12.</p> |
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| | <p>(iv) monitoring and control systems housed within a control room building or container; and</p> <p>(v) weather stations and DC electrical boxes.</p> <p>(ba) Other than works comprised within or for the purposes of sub-paragraph (b)(iii), Work No. 1B works must not be constructed on the land labelled plots 5-03, 5-07, and 7-01 on the land plans, and</p> <p>(c) Work No. 1C— subject to sub-paragraph (ca), works on the West A Site comprising—</p> <p>(i) solar modules;</p> <p>(ii) solar stations;</p> <p>(iii) electrical cables including electrical cables connecting to Work No. 3C;</p> <p>(iv) monitoring and control systems housed within a control room building or container; and</p> <p>(v) weather stations and DC electrical boxes.</p> <p>(ca) Other than works comprised within or for the purposes of sub-paragraph (c)(iii), Work No. 1C</p> <p>works must not be constructed on the land labelled plots 10-21, 11-07, 11-08,</p> | | <p>The Applicant's second "without prejudice" draft DCO will make amendments to the Requirements that require the submission of final plans, to reference the fact that the final plan needs to take into account the authorised development as granted rather than the authorised development as envisaged in the outline or framework plans.</p> <p>Finally, it has been suggested that the Applicant should have embraced these changes on receipt of the LIR, but that is ignoring the Examination process purpose – which is to test an application. Furthermore, the wholesale removal of plots should be tested in an Examination as well. Both the application and the plots in question have been tested in the Examination and the Applicant did change its Scheme during the Examination through the removal of, for example, West Site B. It remains the case that the Applicant considers that its Scheme as proposed at the end of the Examination is acceptable in planning terms and meets the policy tests.</p> |
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| | <p>12-02, 13-02, 13-03, 13-04, 14-01, 14-02 and 14-03 on the land plans,</p> <p>and associated development within the meaning of section 115(2) of the 2008 Act including—</p> | | |
| <p>Schedule 1 Work No. 2C</p> | <p>[If if solar panels and other above ground infrastructure were to be excluded from parcels W03-W12, within Land Plan Parcel Nos. [REP6-005]10-21, 11-07, 11-08, 12-02,13-02,13- 04,14-01, 14-02, 14-03] then:</p> <p>[(c) Work No. 2C—a battery energy storage compound on the West A Site comprising—</p> <p>(i) battery energy storage cells;</p> <p>(ii) a structure protecting the battery energy storage cells comprised in Work No. 2C(i) and ancillary equipment, being either one container or multiple containers joined to each other, mounted on a reinforced concrete foundation slab or concrete piling;</p> <p>(iii) heating, ventilation and air conditioning (HVAC) or liquid cooling systems either housed within the containers comprised in Work No. 2C(ii), attached to the side or top of each of the containers, or located separate from but near to each of the containers;</p> <p>(iv) battery stations;</p> <p>(v) monitoring and control systems housed within a container with the HVAC</p> | <p>It would appear that subject to eventual further robust justification by the Applicant that there would be no need for this work if solar panels and other above ground infrastructure were to be excluded from parcels W03-W12.</p> | <p>The Applicant refers to its response to the Rule 17 letter dated 10th March 2023 that has been submitted alongside this response to the ExA's changes to the draft DCO at Deadline 9.</p> |

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| | <p>or liquid cooling systems in Work No. 2C(iii) or located separately in its own container or control room;</p> <p>(vi) electrical cables including electrical cables connecting to Work No. 3C;</p> <p>(vii) fire safety infrastructure comprising fire suppression system; and</p> <p>(viii) a water storage structure for the purposes of firefighting comprising fire water tanks and fire water containment.]</p> | | |
| Schedule 1 Work No. 6 | <p>Work No. 6— works to create, enhance and maintain green infrastructure, including—</p> <p>(a) Work No. 6A— subject to subparagraph (ab), works on the East A Site comprising—</p> <p>(i) soft landscaping including planting;</p> <p>(ii) landscape and biodiversity enhancement measures;</p> <p>(iii) earth works;</p> <p>(iv) permissive paths;</p> <p>(v) hard standing and hard landscaping;</p> <p>(vi) drainage and irrigation infrastructure and improvements or extensions to existing irrigation systems;</p> | <p>It would appear that subject to eventual further robust justification by the Applicant that there would be no need for this work if solar panels and other above ground infrastructure were to be excluded from parcels W03-W12.</p> | <p>Please see the comments above in response to the proposed changes to Schedule 1.</p> |

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| | <p>(vii) fencing, gates, boundary treatment and other means of enclosure; and</p> <p>(viii) improvement, maintenance and use of existing private tracks.</p> <p>(ab) Other than for the purposes associated with the works comprised in the works within subparagraph</p> <p>(a)(iii) of Work No. 1A or within Work No. 4, Work No. 6A must not be constructed on the land labelled plots 2-02 and 3-01 on the land plans.</p> <p>(b) Work No. 6B—subject to subparagraph (ba), works on the East B Site comprising—</p> <p>(i) soft landscaping including planting;</p> <p>(ii) landscape and biodiversity enhancement measures;</p> <p>(iii) earth works;</p> <p>(iv) permissive paths;</p> <p>(v) hard standing and hard landscaping;</p> <p>(vi) drainage and irrigation infrastructure and improvements or extensions to existing irrigation systems;</p> <p>(vii) fencing, gates, boundary treatment and other means of enclosure; and</p> | | |
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| | <p>(viii) improvement, maintenance and use of existing private tracks.</p> <p>(ba) Other than for the purposes associated with the works comprised in the works within subparagraph</p> <p>(b)(iii) of Work No. 1B or within Work No. 4, Work No. 6B must not be constructed on the land labelled plots 5-03, 5-07 and 7-01 on the land plans, and</p> <p>(c) Work No. 6C— subject to subparagraph (ca), works on the West A Site comprising—</p> <p>(i) soft landscaping including planting;</p> <p>(ii) landscape and biodiversity enhancement measures;</p> <p>(iii) earth works;</p> <p>(iv) hard standing and hard landscaping;</p> <p>(v) drainage and irrigation infrastructure and improvements or extensions to existing irrigation systems;</p> <p>(vi) fencing, gates, boundary treatment and other means of enclosure; and</p> <p>(vii) (vii) improvement, maintenance and use of existing private tracks.</p> | | |
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| | <p>(ca) Other than for the purposes associated with the works comprised in the works within subparagraph (c)(iii) of Work No. 1C or within Work No. 4, Work No. 6C must not be constructed</p> <p>on the land labelled plots 10-21, 11-07, 11-08, 12-02, 13-02, 13-03, 13-04, 14-01, 14-02 and 14-03 on the land plans.</p> | | |
| Schedule 1 Work No. 10 | <p>Work No.10...</p> <p>[Either]</p> <p>Work No. 10—works to create and maintain stone curlew reserve.</p> <p>[or]</p> <p>Work No. 10— works to create and maintain stone curlew reserve</p> | <p>The deletion of Work No.10 would be if the ExA recommends to the SoS that all panels (and related above ground works) be removed from parcels E05, E12, and E13 and is satisfied that the remaining parts of the development do not require any stone curlew offsetting measures.</p> <p>The retention of Work No. 10 would be if the ExA recommends to the SoS that panels and related above ground works should not be removed from one or more of parcels E05, E12, or E13.</p> | Please see the comment above. |
| Schedule 1, Work No. 10 | <p>Work No.10...</p> <p>(a) works within highways, including—</p> <p>(i) alteration of the layout of any street permanently or temporarily, including increasing or reducing the width of the carriageway of any street by increasing or reducing the width of any kerb, footway, cycleway, or verge within the</p> | See comment on Article 27 | The Applicant refers to its response to the ExA's comments on Article 27(1)(b). The removal of vegetation is covered by the processes and controls in the Framework Construction Environmental Management Plan [REP7-032] and the Outline Landscape and Ecology Mitigation Plan [REP7-015], which both require approval by the relevant planning authorities giving the Councils an appropriate control mechanism. The ability to carry out works to trees and other vegetation in the highways is required by the undertaker to ensure the safe and |

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| | street including removal of any vegetation ; and altering the level or increasing the width of any such kerb, footway, cycleway or verge within the street including removal of any vegetation ; and works for the strengthening, improvement, repair, maintenance or reconstruction of any street; | | efficient construction, operational and maintenance of the authorised development and ensure the maximum benefits can be realised from this renewable energy generation NSIP throughout the lifetime of the Scheme. Proposed change not accepted. |
| Schedule 5 | Indicate where streets referred to in Schedule 5 are public or private. | To make clear which roads affected are publicly maintained and which are privately maintained. | The Applicant refers to paragraphs 7.4.1 of its ISH4 post hearing submission [REP7-060] where it confirms that it will make this change in the next version of the draft DCO to be submitted at Deadline 10. |
| Schedule 10 | framework construction traffic management and travel plan | In the interests of clarity | The Applicant will make this change in the next version of the draft DCO to be submitted at Deadline 10. |
| Schedule 12 | Insertion of the protective provisions for the benefit of the highway authority. | To make appropriate provision for the protection of relevant local highway authorities | The Applicant confirms that the parties are still negotiating the protective provisions and the final draft DCO will either include the agreed version, or if they are not agreed, it will include the Applicant's preferred protective provisions with an accompanying explanation of why they are acceptable to protect the interests of the local highway authorities. |
| Schedule 12 | Insertion of the protective provisions for the benefit of the South Staffordshire Water. | To make appropriate provision for the protection of apparatus of South Staffordshire Water PLC | The Applicant confirms that the agreed protective provisions for the benefit of South Staffordshire Water are included in the final draft DCO to be submitted at Deadline 10. |
| Schedule 13 | Inclusion of the Councils' proposed fee schedule. | To make proper provision for the reimbursement of the costs of RPAs in discharging requirements. | The Applicant refers to its response to the Examining Authorities third written question 3.5.1 [REP7-055] and its response to the local authorities Deadline 7 submissions [REP8-023] setting out its position that the fee schedule proposed by the Councils is not justified for the nature and scale of the Scheme. The Applicant notes that there is no precedent for fees to be paid to the discharging authorities in the two other made solar |



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| | | | <p>DCOs, but notwithstanding this it has proposed a fair and reasonable fee schedule (as set out in Appendix B of its response to the ExA's third written questions [REP7-055]).</p> <p>The Applicant acknowledges the resourcing constraints on the Councils and it proposes to amend its fee schedule to include Requirement 8 (Landscape and ecology management plan), Requirement 19 (Stone curlew), Requirement 14 (Construction Environmental Management Plan) and Requirement 15 (Operational Environmental Management Plan) within the scope of Category 1 requirements as it recognises that approval of these plans will require more input from the relevant authorities than other requirements. The Applicant will share its updated proposal with the Councils prior to including it in the final draft DCO to be submitted at Deadline 10.</p> |
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